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# **ELEMENTARY BANKING**

# ELEMENTARY BANKING

With the text of the *Bills of Exchange Act, 1882* ; the *Bills of Exchange (Crossed Cheques) Act, 1906* ; the *Bills of Exchange (Time of Noting) Act, 1917* ; and the *Bills of Exchange Act (1882) Amendment Act, 1932*

BY

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## PREFACE

THIS book has been written in the hope that it will be found useful to bank men and others who are beginning the study of the law and practice of English banking, and particularly to students who are preparing for the Part I Examination of the Institute of Bankers. With this object in view, a large portion of the book has been devoted to cheques and bills, and the Bills of Exchange Acts, 1882, 1906 and 1917 have been given in full in the Appendix.

The author desires to acknowledge his indebtedness to the standard works of English banking law, and particularly to *Questions on Banking Practice* and the *Journal of the Institute of Bankers*. The author's grateful thanks are due to Mr. Ernest Sykes for his kind assistance and advice.

LONDON, E.C. 3, *May* 1923.

## THE ENGLISH WAY

A Text-book on the Art of Writing. By B. L. K. HENDERSON, D.Lit. Crown 8vo, 370 pp. 7s. 6d. net. *Ninth Impression.* This book deals in a very fresh way with the all-important subject of English Composition. The author, apart from his high academical qualifications, is specially equipped for writing such a book, since he has been teaching and lecturing upon the subject for the past twenty years.

*This book has been added to the list of books recommended by the Council of the Institute of Bankers to students preparing for the Institute's examinations.*

*The Midland Venture* (organ of the Midland Bank, Ltd.) says: "Rarely has a book, dealing with a technical subject, been presented to the public in so happy and human a manner as *The English Way* by Dr. Henderson."

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*Journal of the Institute of Bankers* says: "For this book we have nothing but praise."

## A PRACTICAL GUIDE TO PRÉCIS WRITING AND INDEXING

By G. O. E. LYDALL, L.L.A., Lecturer in English at the City of London College. Crown 8vo, 256 pp. Price 4s. net. This book is on the list of books recommended by the Council of the Institute of Bankers. *Fifth Impression.*

*The Bank Officer* says: "Compared with the books that were in use fifteen years ago, the present volume strikes us very favourably. Three or four pages of disputed advice by way of an introduction, based upon the reports of the Civil Service Commissioners, was usually all the instruction such books contained, and the rest consisted of a reprint of series of Foreign Office letters, twenty to fifty years old, which the student was expected to read and digest into condensed epitomes of about three hundred words. The present volume, in contrast, contains ten short chapters of instruction upon the elements of précis writing, the use of indirect speech, logical order, etc., and the exercises are taken mostly from the current numbers of the daily newspapers."

## ECONOMICS FOR EXAMINEES

By ALLEN WATKINS, M.A.(Econ.), F.C.A., and E. M. TAYLOR, F.C.A. Crown 8vo, 120 pp. Price 6s. net.

This book contains information in a condensed form which would otherwise be inaccessible to students except through a wide and lengthy course of reading. Invaluable to examination candidates.

*Scottish Bankers' Magazine* says: "The compilers of this treatise are both well-known writers in the field of Economic Science, and in the present treatise they have been successful in marshalling a vast amount of information in a highly condensed form eminently adapted for students of economics preparing for examinations."

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## CHAPTER I

### NATURE OF BANKING—FUNCTIONS OF A BANKER— BANKS AND BANKING COMPANIES

1. **Historical.**—The word “bank” is generally considered to be derived from the Italian word *banco*, “a bench,” and took its origin from the benches which the Jews in Lombardy used in carrying on their banking operations. Banking in its earliest forms is a very ancient business, and, although adequate treatment of the history of the subject is outside the scope of this treatise, yet the following brief recital of the chief phases through which banking has passed in England may enable the reader to appreciate more readily the nature of banking and the functions of a banker.

The first function of the direct ancestors of the modern English banker was that of money-changing, and we find that in the reign of Edward III this was undertaken by a Royal Exchanger for the benefit of the Crown. He made his profit in the difference between the amount of English money he gave for the various foreign moneys tendered to him by travellers and merchants entering the kingdom, who required English money, and the amount of English money he received in exchange for the foreign moneys he gave to persons going out of the country. In other words, he made his profit in the difference between the rate at which he bought foreign money and the rate at which he sold it. The foreign exchange dealer of the present day, with his private lines and numerous telephones, makes his profit in exactly the same way.

When the office of Royal Exchanger fell into abeyance, his functions were performed by the goldsmiths, who, as workers in gold and silver, were particularly fitted for the business of appraising the value of the miscellaneous coins circulating in those times. Furthermore, they had the necessary accommodation for the safe storage of the precious metals.

Arising out of the above, we find that merchants and moneyed people began to entrust their spare cash to the goldsmiths, receiving in exchange a form of receipt. These receipts, known as "goldsmith's notes," constitute the earliest form of bank-note. They were payable on demand, and enjoyed a considerable circulation. When the goldsmiths commenced to lend money, and to borrow money with a view of lending it again, an important step was taken in the development of banking. They lent money by issuing their own notes to the borrowers. When it was discovered that only a small proportion of notes was presented for encashment at any one time, and that notes far in excess of the actual cash in their hands could be safely issued, banking, as we understand it, was established. In other words, "credit" had been manufactured. It should be noted that the goldsmith's notes were payable on demand, and that the receipt of money repayable on demand is still one of the chief characteristics of English banking.

At this time the issuing of notes became so closely associated with banking business that it was for many years regarded as an indispensable function of a banker.

The next phase arose when arrangements were made by which, instead of taking notes, the depositor could issue an order on the goldsmith instructing him to pay the sum stated in the order. These orders were drawn payable to bearer, and bore serial numbers. They were, therefore, similar to the goldsmith's notes which, in due course, they supplanted. As with the notes, the serial numbers were registered for the purpose of verification. Hence, the books of forms were called "check books."

Until the foundation of the Bank of England in 1694, the goldsmith-bankers, and those merchants who added banking to their business activities as mercers, brewers, etc., were the only bankers in the country. After the establishment of the Bank of England, legislation was directed against the competition of other banks by limiting the number of partners of an issuing bank to a maximum of six. As the issuing of notes was considered to be an indispensable part of a banker's business, it was thought that this limitation of partners would prevent the formation of any formidable rival to the Bank of England. For various reasons, however, bankers began voluntarily to discontinue their note issues, and when in 1833 joint stock banks, which had no right of issue at all, began to be established, banking entered into its present phase.

**2. The Bank of England.**—The Bank of England was founded

under a scheme put forward by a Scotsman named William Paterson to raise money for the Government. William III had not long been on the throne, and was in great need of funds to continue the war with France. The scheme was to apply the joint stock principle to banking, and to lend the money raised to the Government. The Bank's Charter granted limited liability and authorised the Bank to issue notes. This Charter authorised the Bank to continue for ten years, and it was renewed for various intervals from time to time.

The Capital at the Bank's inception was £1,200,000, and this sum was the first funded debt of the country. Prior to the establishment of the Bank, the Government, when the Treasury was empty, had to borrow such sundry sums as individuals could be induced to lend. Henceforth, the Bank lent such sums as were necessary, and in this and other respects proved to be of the greatest service to the Government and to the country. To secure its pre-eminence, legislation was directed soon after its foundation against competitors. Thus in 1708, the Act of Parliament renewing the Bank's Charter provided that no partnership or corporation consisting of more than six persons could issue notes. This remained the law until 1826, when banks consisting of more than six partners, provided they had no office within sixty-five miles of London, were allowed to issue notes. The Act of this year also authorised the Bank of England to open branches.

The next great event in the history of the Bank of England and of banking in England was the Act of 1833, which renewed the Bank's Charter for a further period, and made the Bank's notes legal tender for sums above £5, except at the Bank and its branches. The Act also authorised the formation in London of joint stock banking companies consisting of more than six persons provided they did not issue notes. Under this Act were founded the National Provincial Bank of England, 1833, London & Westminster Bank, 1834, London Joint Stock Bank, London & County Bank, both 1836, and Union Bank of London, 1839. Messrs. Hoare & Co. of Fleet Street, was established prior to 1673, while Messrs. Child & Co., absorbed by Glyn, Mills & Co. in 1924, was established before 1560.

Another stage in the history of the Bank of England and of English banking was the passing of the much criticised Bank Act of 1844, to regulate the issuing of notes in England. There had been numerous financial crises and the consequent distress had been much aggravated by the numerous failures of private bankers. There was no limit to the issue of notes, and the Act was passed to limit all issues, including those of the Bank of England, and gradually to eliminate

entirely the issues of all the other banks and bankers. In regard to the latter, this was not finally accomplished in England and Wales until 1921, when the last note-issuing bank (Messrs. Fox Fowler & Co.) lost its right of issue on being absorbed.

As regards the Bank of England, the Act provided that the Bank was to keep its note issues distinct from its general banking business. An Issue Department was therefore formed, to which was transferred all the notes issued, and securities to the value of £14,000,000, the balance being made up of gold and silver. The securities included the sum of £11,015,100 owing to the Bank by the Government. (This is merely a book debt on which the Government pays interest.) Every note above £14,000,000 had to be covered by gold coin or bullion (or silver bullion to a limited extent).

The next great event in the history of the Bank was the passing of the Currency and Bank Notes Act, 1928. This Act, together with the Bank Act of 1844, controls the issue of notes in England and Wales. When the Great War broke out in 1914, the Government deemed it desirable to issue currency notes of £1 and 10s. These were, at first, issued solely on the credit of the country, but later, in preparation for the taking over of the issue by the Bank of England and the return to the old system that all note issues should be centred in the Bank, certain assets, in the form of Bank of England notes, silver and Government securities were provided. On the 22nd November, 1928, the Bank of England took over all the currency notes issued by the Treasury.

The Bank of England has to publish a weekly statement, showing separately the assets and liabilities of the Issue and the Banking Departments. The return issued for the week ended 12th February, 1937, is given on the opposite page.

In regard to the Issue Department, the item "Notes Issued" comprises all the notes issued by the Bank. These are legal tender currency in England and Wales for any amount, and the Bank's notes for £1 and 10s. are also legal tender in Scotland and Northern Ireland. The Scots and N. Irish banks of issue are entitled to issue their own notes of £1 and upwards, and are empowered to hold Bank of England notes against such issues instead of gold coin.

Amongst the assets is the item Government Debt, which has already been explained. The other two security items call for no comment. "Silver coin" consists of silver coin which is current and legal tender in the United Kingdom, and by the provisions of the Currency and Bank Notes Act, 1928, may not exceed £5,500,000.

The total of the securities, including the silver coin, amounts at present to £200,000,000 and the issue against them is termed the *Fiduciary Note Issue*. (A reduction from £260,000,000 to £200,000,000 was made in December, 1936.) All notes issued beyond this amount must be covered by gold coin and bullion.

## ISSUE DEPARTMENT

	£		£
Notes issued:—			
In circulation ..	454,993,929	Government Debt ..	11,015,100
In Banking Department	58,666,732	Other Govt. securities ..	187,935,898
		Other securities ..	1,039,058
		Silver coin ..	9,944
		Fiduciary issue ..	200,000,000
		Gold coin and bullion ..	313,660,661
	<u>£513,660,661</u>		<u>£513,660,661</u>

## BANKING DEPARTMENT

	£		£
Capital .. .	14,553,000	Government securities ..	81,230,231
Rest .. ..	3,614,636	Other securities:—	
Public deposits* ..	11,695,579	Discounts and advances ..	6,509,174
Other deposits: -		Securities .. ..	19,517,279
Bankers' ..	99,157,140	Notes .. ..	58,666,732
Other accounts ..	37,344,628	Gold and silver coin ..	451,567
	<u>£166,374,983</u>		<u>£166,374,983</u>

\* Including Exchequer, Savings Banks, Commissioners of National Debt, and Dividend Accounts.

In order to provide for a certain measure of elasticity in the country's note issues, the Treasury may, on the request of the Bank, authorise a specified increase in the fiduciary note issue for a period not exceeding six months, and renewals or variations may be made from time to time in like manner, but no increase can remain in force for more than two years without the sanction of Parliament. Any increase authorised by the Treasury has to be reported forthwith to both Houses of Parliament. The Treasury may also, on the request of the Bank, authorise a reduction in the amount of the fiduciary issue. The Bank has always to keep sufficient securities in the Issue Department to cover the fiduciary issue for the time being.

All the net profits made by the Issue Department have to be paid to the Government, and the Bank, therefore, does not include any of the income from this department in its Income Tax Returns. The notes are also exempt from stamp duty and any payment in lieu thereof.

By virtue of s. 1 (1) of the Gold Standard Act, 1925, the Bank of

England is not bound to pay any of its notes in gold *coin*. So long as this section remains in force, Bank-notes for £1 and 10s. shall be deemed a legal tender of payment by the Bank, or any of its branches, including the payment of its own notes of the larger denominations. The larger notes are payable in £1 and 10s. notes at the Head Office of the Bank, or, if issued by a branch, then also at that branch. The smaller notes are payable only at the Head Office.

Prior to the Gold Standard (Amendment) Act, 1931, the Bank was bound to sell to any person, against payment in any legal tender, gold bullion at the price of £3 17s. 10½d. per ounce troy of gold of the standard fineness of  $\frac{11}{12}$ ths, but only in the form of bars containing approximately 400 ounces troy of fine gold (Gold Standard Act, 1925, s. 1 (2)). This proviso enabled bankers and others to purchase gold for export when required. Under the provisions of the Bank Act, 1844, the Bank is still compelled to exchange for notes all gold offered to it at the price of £3 17s. 9d. per ounce of standard fineness, though naturally no one is likely to offer gold at this price under present conditions. In this way the Bank maintained a free gold market in London, though its notes were not exchangeable for gold in the same way as they were before the Great War, when gold could be demanded for a £5 note. Hence, though we had no longer the luxury of an internal gold circulation, our notes were convertible into gold for all material purposes. In September, 1931, however, the Amendment Act was passed and the Bank was freed from the obligation to sell gold under the above clause, and this position will no doubt continue until stabilisation is again effected.

The Currency and Bank Notes Act, 1928, provides that "If any person prints, or stamps, or by any like means impresses, on any bank-note any words, letters or figures, he shall, in respect of each offence, be liable on summary conviction to a penalty not exceeding one pound." The object of this clause is to prevent any notes being disfigured by advertisements, and, in particular, to enable the Bank to re-issue the £1 and 10s. notes if so desired. Whilst nothing must be put on the small notes, it is understood that the Bank will not object to a bank stamp being put on the *back* of soiled notes of £5 and upwards when presented to the Bank for payment. It should be noted that this section does not mean that any note so defaced is not a legal tender, but only that the person responsible is guilty of an offence. Further details respecting Bank-notes are given in Chapter XIII.

In regard to the items mentioned in the return of the Banking

Department, the Capital has stood at £14,553,000 since 1816. The "Rest," which corresponds to the joint stock bank's "Reserve Fund," is never allowed to fall below £3,000,000, and is part of the proprietors' funds, since it has been accumulated out of undivided profits.

The term "Public Deposits" is explained by the footnote of the statement. "Other Deposits" consist of the balances kept with the Bank by its customers in London and at the Bank's branches, and the balances deposited by other banks. The total corresponds to the "Current, Deposit and other Accounts" of the joint stock banks, and shows the Bank's liabilities to the general public on these accounts. The Bank of England does not allow interest on money deposited with it.

The next item needing comment is "Other Securities." This term covers all securities held by the Bank other than Government securities, and all advances and loans made to its customers, including bills discounted.

The remaining two items, notes and gold and silver coin, constitute what is known as the "Reserve." From these the Bank meets its customers' withdrawals in cash or notes. As, however, the Bank numbers amongst its customers the London Clearing and other banks, which keep their surplus funds with the Bank, and replenish their tills by drawing on their accounts, the Bank really keeps the final cash reserves of the whole country.

As the banker of the Government and the other banks, the Bank of England occupies a very important position. The application, however, of the principle of limited liability to banks under the Companies Act of 1858 and subsequent Acts has brought about the great joint stock banks with resources far in excess of those of the Bank of England.

The Bank of England fixes the "Bank Rate" on which is based the London bankers' rate for short deposits, i.e. deposits repayable at call and short notice, and the discount brokers' deposit rates. Since the rates at which bankers allow on money borrowed by them from the public necessarily influence the rates at which they are prepared to grant loans or discount bills, the Bank of England, through the Bank Rate, is an important factor in the control of the value of money, particularly money borrowed for short periods. The following quotation from *The Times*, 12th February, 1937, illustrates the close connection with the Bank Rate of the rates for short deposits, short loans and for discounts.

"The Bank Rate is 2 per cent., to which it was reduced from 2½ per

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cent. on 30th June 1932. The banks' deposit rate is  $\frac{1}{2}$  per cent., and the deposit rates of the discount houses are  $\frac{1}{2}$  per cent. at call and  $\frac{3}{4}$  per cent. at notice. Following are market loan rates and the market's buying rates for bills:—

Loans (per Cent.).		Discount (Bank Bills) (per Cent.).			
Day to day.	For short periods.	60 days.	3 months.	4 months.	6 months.
$\frac{1}{2}$ —1	$\frac{1}{2}$ —1	$\frac{1}{2}$ — $\frac{1}{4}$	$\frac{1}{2}$ — $\frac{1}{4}$	$\frac{1}{4}$ — $\frac{5}{8}$	$\frac{1}{4}$ — $\frac{5}{8}$

  

Discount (Treasury Bills).		Fine Trade Bills).		
2 months.	3 months.	3 months.	4 months.	6 months.
$\frac{1}{2}$	$\frac{1}{2}$	$2-2\frac{1}{2}$	$2\frac{1}{4}-2\frac{1}{2}$	$2\frac{1}{2}-3$

“Bank Rate” is the rate at which the Bank of England is prepared to grant loans for short periods or to discount approved bills of exchange of short currency. For its own customers, however, the Bank charges the “Market Rate,” which is generally lower than Bank Rate. This is to put its customers on the same footing as those of other banks. “Market Rate,” though very largely dependent on Bank Rate, for the reasons given above, is also directly influenced by the daily supplies of money seeking employment and the daily demand for such money.

**3. Nature of Banking.**—A banker is a dealer in money and credit. A dealer in potatoes can readily be visualised, but it is not easy to understand what is meant by the expression “a dealer in credit.” The word “credit” is used in various senses. It sometimes means “reputation for solvency,” as when we say “Smith's credit is good.” Arising out of this, if an article is sold, and the seller agrees to wait for his money, the seller is said to give “credit.” Now the seller has a legal right to receive payment of the amount, while, on the other hand, the buyer is under a corresponding legal liability to pay his “debit” or “debt.” This leads us to the “credit” which is the foundation of modern banking. A banker has only a small portion of the money deposited with him in the form of cash. The remainder exists in credit instruments, such as bills, notes, cheques, securities, etc., where the debt is evidenced by special documents, and in overdrafts and loans, where the debt

may not be evidenced by any document, but is, nevertheless, a debt for which the borrower is legally liable.

When the goldsmith issued £100 of his notes against the deposit of £100 in gold kept in his safe to meet the notes, he did not create "credit." But when he issued £200 worth of notes against £100 of gold, then he did create "credit," and this credit enabled £100 in gold to do the work for which £200 had previously been required. The main business of a banker as a dealer in money is aptly described by Gilbart in his *History, Principles and Practice of Banking*, from which the following quotation is taken: "He [the banker] is an intermediate party between the borrower and the lender. He borrows of one party, and lends to another, and the difference between the terms at which he borrows and those at which he lends forms the source of his profit."

Though the difference between the rate he allows on money lodged with him by his depositors and that charged by him on loans and overdrafts, money at call or for discounting bills, etc., constitutes the banker's main source of revenue, he has other important items to bring into his Profit and Loss Account. Amongst these are commissions charged on current and other accounts, or commissions earned in connection with the collection of bills of exchange, etc., stock exchange transactions, etc., and interest on investments. In passing, we may mention that the principal items on the other side of his Profit and Loss Account are interest allowed on deposits, salaries, wages, and pensions, rates, taxes, and insurance, rent of and repairs to premises, stationery, postages, travelling expenses, etc.

**4. Utility of Banking.**—A good banking system confers incalculable benefits on the community by enabling credit to function in the most economical way. Amongst these benefits are:—

(1) Banking transfers capital from those who are unwilling or unable to use their surplus capital in production to those who are both willing and able so to employ it. The sundry small balances on deposit and current accounts would, individually, be useless in assisting industry, but, in the aggregate, they amount to a very large sum, which the banks lend to traders and manufacturers who desire and deserve accommodation. Banks thus increase the supply of available capital for industry. Production is thereby stimulated and employment created.

(2) Capital is transferred from those districts which have a surplus to those where there is a deficiency, as, for example, from the country districts to the manufacturing districts.

(3) Banking effects great economy in metallic money and currency. The greater part of the country's business is settled by cheques without the use of coin or notes. This sets free a vast amount of capital which is available for industry. The use of cheques also effects an enormous saving of time and labour, and frees the public from the risks of loss which the use of coin and notes would involve.

(4) The stability of our banks and the facilities offered to depositors and current account holders are a great incentive to thrift and saving, to the great benefit of the community.

5. **Functions of a Banker.**—The functions of the modern banker are numerous and varied, and may be summarised as follows:—

(1) The receipt of money on current accounts repayable on demand, or on deposit accounts repayable on demand or subject to an agreed notice.

In this the banker is a borrower and his relation to his customer is that of debtor.

(2) The granting of loans and overdrafts.

In this the banker is a lender and a creditor of his customer.

(3) The discounting of bills of exchange and promissory notes.

(4) The collection, on behalf of his customers, of cheques, bills of exchange and other instruments representing money. Here the banker acts as an agent for his customer.

(5) The issuing of drafts, letters of credit and circular notes wherein the banker is a seller of credit instruments against cash or securities or the credit of his customer. The issuing of bank-notes in England and Wales is now the monopoly of the Bank of England. Banks in Scotland and Ireland issue their own notes.

(6) The performance of certain subsidiary services:—

(a) The purchase and sale of Stock Exchange securities, wherein the banker acts as agent for his customer.

(b) The making of periodical payments, such as charitable and club subscriptions, insurance premiums—the relationship between banker and customer in this connection being that of mandatory and mandant.

(c) The taking charge of such of his customers' valuables as can be conveniently stored for safe custody in the banker's strong rooms. In this capacity the banker is a *bailee*, *i.e.* a person to whom goods are entrusted for a specific purpose, *e.g.* storing the goods, or transporting them from one place to another.

If duly authorised, a joint stock bank may act as a custodian

trustee under the Public Trustee Act, 1906, in which case the bank has the custody of the securities and documents of title relating to the trust property. Some joint stock banks take powers to act as Executors and Trustees for their customers.

Another incidental function undertaken by bankers is that of answering inquiries regarding the respectability of their customers. A private person may not often need to give a reference, but persons in business frequently require bankers' references as to their standing and financial responsibility.

**6. Definition of a Banker.**—The banker performs many services, but the function of receiving money from his customers on current account and repaying it by honouring their cheques when presented for payment is the one function above all others which distinguishes banking from any other kind of business. The definition given in Hart's *Law of Banking*, 4th edition, p. 1, is "A Banker or Bank is a person or company carrying on the business of receiving moneys, and collecting drafts, for customers subject to the obligation of honouring cheques drawn upon them from time to time by the customers to the extent of the amounts available on their current accounts."

As in the Bills of Exchange Act, 1882, the term "banker," throughout this book, "includes a body of persons, whether incorporated or not, who carry on the business of banking." The Money Lenders Act, 1911, provides that no person shall be registered as a money-lender under any name including the word "bank," or under any name which implies that he carries on the business of banking.

**7. Classification of Banks.**—There are several types of banks carrying on business in England. First, the Bank of England, established under Act of Parliament and incorporated by Royal Charter and not affected by the Companies Acts. The liability of the stockholders is limited to the amount of stock they hold. Secondly, the great joint stock banks registered under the Companies Acts with limited liability, such as Barclays Bank, Limited, Midland Bank, Limited, Lloyds Bank, Limited, etc. Thirdly, joint stock banks with unlimited liability, the shares of which are held privately. To this class belongs the banking firm, Messrs. Glyn, Mills & Co. Until the year 1858 all the joint stock banks then in existence (except the Bank of England) were companies with unlimited liability. Fourthly, banking partnerships with unlimited liability, as, for example, Kleinwort Sons & Co. Fifthly, Scotch, Irish, Colonial, and foreign banks whose principal places of business are outside England and Wales, such as the Royal Bank

of Scotland, Provincial Bank of Ireland, Ltd., Bank of Montreal, Hongkong & Shanghai Banking Corporation, Crédit Lyonnais, National City Bank of New York.

The joint stock banks, the class in which most of the banks of England and Wales are included, are governed by the Act to which the majority of joint stock companies are subject, namely, the Companies Act, 1929. Amongst the various provisions of that Act we find that a banking partnership cannot consist of more than ten persons, unless it is registered as a company. Every limited company must make an annual return showing the names and addresses of all shareholders, and of those who have ceased to be shareholders during the year, together with the numbers of shares held or transferred, as the case may be. A complete list of all places of business must also be given, and a statement in the form of a balance sheet, giving the capital, assets, and liabilities. This return is called the *Annual List of Members and Summary*.

Every limited *banking* company must, under penalty for default, on the first Monday in February and the first Tuesday in August, make a statement showing the capital and the assets and liabilities of the company. A copy of this statement must be exhibited in a conspicuous place in the head office and every branch. The accounts of the company must be audited annually by auditors selected at each annual general meeting. The balance sheet must be signed in accordance with the provisions of the Companies Act, 1929; and the auditors' report must be attached, and read at the General Meeting.

Under the provisions of the Bank Charter Act, 1844, every person carrying on the business of banking must make an annual return of his name, address, and occupation, and, in the case of partnerships, the names of all partners and the name under which the business is carried on must be stated. In the case of limited banking companies this return is superseded by the Annual List of Members and Summary referred to above.

**8. Bank Balance Sheets.**—The nature of the funds in the hands of a banker and the manner of their employment can be readily seen by a study of the *pro forma* balance sheet which appears on p. 11.

**9. Funds Raised.**—The total funds of a banker which are available for the purposes of his business comprise: (1) The Proprietors' Funds, consisting of the Paid-up Capital, Reserve Fund and the Balance of Profit and Loss Account; (2) Money lodged by customers on Current and Deposit Accounts.

**10. Capital.**—*Authorised Capital*, also called *Nominal* or *Registered*

## BANK BALANCE SHEET

<i>Liabilities.</i>	<i>£ s. d.</i>	<i>Assets.</i>	<i>£ s. d.</i>
Share Capital Authorised.		Coin, Bank Notes, and Balances with the	
.... Shares of £.... each.....	.....	Bank of England .....	
		Balances with, and cheques in course of collection on, other Banks in Great Britain	
		and Ireland.....	
		Money at Call and Short Notice .....	
		Bills Discounted .....	
		 Investments—	
		Securities of, or guaranteed by, the British Government (of which £..... is lodged for Public Accounts).....	
		British Dominion and Colonial Government Securities, British Corporation Stocks.....	
		Sundry Investments.....	
		 Investments in Affiliated Banks (at cost <i>less</i> amounts written off)	
		..... Shares in ..... Bank, Ltd....	
		Advances to Customers and other Accounts .....	
		Balances in account with Affiliated Banks .....	
		 Liability of Customers for Acceptances, Indorsements, etc. ....	
		Bank Premises (at cost, <i>less</i> amounts written off).....	
			.....

Directors' Remuneration for the year, including Remuneration paid to them as Directors of Affiliated Banks, amounted to £....

*Capital*, is the amount which the banking company at its inception takes power to issue. *Subscribed Capital* is that part of the authorised capital which has been taken up by and issued to the shareholders. *Paid-up Capital* is that part of the subscribed capital which the shareholders have contributed in cash. *Uncalled Capital* (divided into *Callable Capital* and *Reserve Capital*) is that part of the subscribed capital not paid up. *Callable Capital* is that part of the uncalled capital which the directors have power to call up when they deem fit, whilst *Reserve Capital* is only callable in the event and for the purposes of the company being wound up. This uncalled capital—both callable and reserve—forms additional security for customers who have lodged money with the bank. The proportion of subscribed capital that has been actually paid up varies with each bank.

11. **Reserve Fund.**—This fund consists of accumulated undivided trading profits (plus, in some instances, premiums received on the issues of new shares), set aside to provide for contingencies, such as the equalisation of dividends, and any unusual call upon the bank's resources. In most cases, the reserve fund approaches in amount the paid-up capital, and in some cases it is greater than the paid-up capital. In addition to the Reserve Fund, most of the banks have accumulated *Secret Reserves*, which are not disclosed in the published balance sheets. One source of such secret reserves is to be found in the under-valuation of Bank Premises. The Bank of England goes even farther than the other big banks, for the freeholds of the Head Office and Branches—though of immense value—do not figure in the balance sheet at all. Probably many of the freehold premises owned by the large banks are estimated at much below their actual market value. Another source of secret reserves is the valuation of investments at below market price. Whatever may be said from the shareholder's point of view against this policy of creating undisclosed reserves, it must give cause for satisfaction to the bank's customers that the financial position of the banking concern to which they have entrusted their money is in reality considerably stronger than is disclosed by the published accounts.

12. **Balance of Profit and Loss Account.**—This item represents profits undivided each half year and carried forward. This undivided profit is useful for equalising dividends and is an additional reserve.

13. **Current, Deposit and other Accounts.**—This item represents

the bank's liabilities to its customers for money paid in on Current and Deposit Accounts. It is sometimes amplified by the clause "including rebate on bills not due and provision for bad and doubtful debts and contingencies, etc."

**14. Funds Employed.**—If the reader will glance at the Balance Sheet of any of the English joint stock banks he will see that the bulk of the bank's funds consists of the money lodged with the bank by customers on current and deposit account, and since most of this money is repayable on demand or at short notice, it is essential that the funds should be employed in such a manner that at any time sufficient cash can be raised to meet any unexpected demand upon the bank's resources. Demands which come under this category are varied, as, for instance, a trade union may have very large funds on deposit, which will be quickly dissipated if a strike should take place; or, again, the Clearing House balances may go against the bank for several days running, due to heavy payments for dividends, etc., on the part of customers with large accounts.

The proportion in which each bank distributes its funds depends upon the class of business carried on, and the character of the deposits. The figures of any particular bank will show considerable variation from the average of a number of banks. If the amount of money lodged with a particular bank is liable to large fluctuations, it will be necessary for that bank to keep more money in its tills and at call and short notice than if the amount of money lodged fluctuated from time to time within narrow limits. Generally speaking, the deposits of a country bank are more stable than those of a banker in London and the large manufacturing towns. A banker, therefore, whose clientèle is mainly connected with agriculture, may, without taking undue risks, be able to keep a smaller proportion of his funds in cash and money at call than a banker whose chief customers are of the manufacturing and distributing classes.

**15. Liquid Assets.**—These consist of cash in hand and at the Bank of England, balances with and cheques in course of collection on other banks, and money at call and at short notice. As stated above, the relation between the liquid assets and the bank's commitments towards its customers varies very considerably, and depends upon the character of the business done by each particular bank.

**16. Cash in Hand and balances with the Bank.**—This item includes coin, various denominations of Bank of England notes held by the bank at its head office and branches for its immediate needs, and balances with the Bank of England.

The latter include the balances kept at the Bank of England for the settlement of the daily clearings, and cash held in reserve for contingencies. In a country banker's balance sheet this item would be represented by "Cash at London Agents." It is in this way that the Bank of England has become the reserve depot of all the other banks in the country.

17. *Balances with and cheques in course of Collection on other Banks in the United Kingdom.*—This item is self-explanatory, and appears in all the balance sheets of the larger banks.

18. *Money at Call and Short Notice.*—This item represents loans made to bill-brokers and stockbrokers, generally against first-class bills and approved securities. Sometimes the loan is made from one day to the next, when it is called "overnight money." The loan may also be "at call," *i.e.* repayable on demand, or it may be "at short notice," usually seven days (hence called "weekly money"), and very rarely for a period exceeding a fortnight.

Bankers' loans to stockbrokers generally run from account to account, *i.e.* from one Stock Exchange settlement to another. This settlement normally occurs twice a month (*i.e.* the middle and last Thursdays) for all stocks and shares other than Consols and all British Funds, and also Colonial Government Stocks and new issues, all of which are dealt in for cash. Formerly the settlement for Consols and similar securities was once a month, but this practice was abolished during the Great War. These loans are often secured by depositing bundles of securities valued at the make-up price of the day, with a margin of from 5 per cent. to 10 per cent. to cover possible market fluctuations.

Bill-brokers and discount houses use the money they borrow in the discounting of bills. If the money is "called" by the banker who has lent it, the broker has to borrow from another banker, or to re-discount his bills, either with another banker, or, in case of need, his first-class bills of short currency can be discounted with the Bank of England. In the normal way, the broker can very easily reduce his indebtedness with the proceeds of his bills as they mature and are paid.

19. *Investments.*—These consist of first-class securities, such as Consols, War Loans, and other Stocks guaranteed by the British and Colonial Governments, Municipal Corporation Stocks, British and Indian Railway Debenture Stocks, etc. It should be noted that, in some cases, part of these investments are earmarked as security for National, County, and other Public Accounts. These earmarked Stocks are registered in the names of joint trustees, the bank

receiving the dividends. The amount of these earmarked securities is shown in a note on the balance sheet.

20. **Bills Discounted.**—This item represents the total amount of maturing bills discounted for their customers. These bills are of two kinds: (1) First-class bills discounted for the bill-brokers, as short period investments; (2) ordinary trade bills discounted for customers. Owing to the decline of the mercantile bill in favour of the cheque as a means of internal payment, commercial bill discounting now forms but a small part of a banking business.

First-class bills are, as George Rae says in his *Country Banker*, 5th edition, p. 243, "the highest form of banking security." He goes on to point out that they are even better than Consols in one particular, since the principal sum will be paid in full when they reach maturity, whereas the price of Consols continually fluctuates. Another feature which makes them such an excellent investment for bankers is that they run for varying periods, and the banker can therefore increase his cash resources by the simple expedient of refusing to discount more bills. And by buying bills from the brokers due at convenient times, he can arrange his finances to suit obligations in the way of meeting dividend payments and the like. Good bills can also be re-discounted.

21. **Advances to Customers and Other Accounts.**—This item represents the banker's advances to his customers on current and loan accounts. They are not in the nature of permanent loans for the purpose of providing the customers with fixed capital, but are repayable on demand or at short notice. This is an essential condition, since, as will be seen from a study of a bank balance sheet the funds out of which these advances are mainly provided are repayable on demand in the case of current accounts and some deposits and at short notice in the case of deposit accounts generally.

22. **Bank Premises.**—This item represents the cost of the premises—head office and branches—less what has been written off for depreciation. As already pointed out, it is safe to say that in most cases Bank Premises stand in the balance sheets at much below their real market value.

23. **Contra Entries.**—Certain contra entries, that is, amounts which appear on both sides of the balance sheet, have not been explained. Of these, *Acceptances and Indorsements on behalf of Customers* is explained on p. 193. In foreign bank balance sheets, Bills for Collection frequently appear on both sides of the balance sheet and need no comment.

## CHAPTER II

### THE CUSTOMER'S ACCOUNT

**24. Opening the Account.**—Before proceeding to deal with cheques, bills of exchange, and other banking instruments, we will explain briefly the method of opening an account and putting the entries through the banker's books. For the purpose of illustration we will take as the customer a local grocer named John Smith.

In the general way, new accounts should only be opened with the concurrence of the manager or a senior official, and, unless the customer is already known to the banker, the names of his previous bankers (if any), or of some responsible parties who can vouch for his business integrity, should invariably be required, and these references duly taken up. It is very undesirable to give a cheque book to a stranger before inquiries as to his respectability have been made, seeing that he may be opening the account merely to obtain possession of a cheque book for the purpose of issuing worthless cheques, involving trouble and risk of loss to the banker and loss to persons to whom the cheques are given.

John Smith proves to be a local grocer who is already favourably known to the manager as an honest and reliable tradesman, so that there is no need to go into the question of references. He wishes to open an account with £300.

The cashier gives Smith a *paying-in slip book* of which the table on p. 17 will serve as an example.

The different banks' paying-in books vary very considerably, both in style and in the position of the counterfoil. In some, all cheques are listed together, whilst in others, London cheques are separated from the country cheques, and, in others, local cheques are entered separately.

The credit, or paying-in slip, having been duly completed, the cashier requests Smith to put his signature or initials in the space after the words "Paid in by." This is essential if the slip has been

## THE CUSTOMER'S ACCOUNT

17

## BRITISH BANK, LIMITED.

## OXFORD BRANCH.

March 1, 1930.

## BRITISH BANK, LIMITED.

## OXFORD BRANCH.

March 1, 1930.

Customers are advised that the Bank reserves the right at its discretion to postpone payment of Cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and London and Metropolitan Cheques two clear days for collection, and are forwarded at the risk of the Customer.

*All Cheques to be crossed British  
Bank, Limited.*

filled up by the cashier himself, and is desirable in other cases. The cashier then checks the amount of cash and notes stated in the credit slip, ticks off the cheques, postal orders, etc., and proves the additions. He then examines the cheques to see if they are properly indorsed, that the words and figures agree, that they are not crossed to another bank, and that they are not post-dated or stale (see p. 34). The reasons for these precautions will be explained in a later chapter.

After seeing that the counterfoil agrees with the credit slip, the cashier initials the counterfoil (and in some banks, the credit slip also), impresses both with a date stamp, and tears out the credit slip, handing back the paying-in book to the customer. The counterfoil forms Smith's receipt. It is very important to see that a credit slip bears the actual date on which the amount is paid in. Amounts paid in should not be entered in the pass book until after they have been posted to the account in the ledger.

**25. The Customer's Signature.**—As Smith is a new customer, it is necessary to take a specimen of the manner in which he will sign his cheques, and all cheques must be carefully examined before being paid to see that the signature is in order. Should a signature appear to be irregular, the banker should get Smith's confirmation (supposing it to be a genuine signature), or, if this be not possible, return the cheque, marked "Signature differs."

Smith need not sign his own name, and a signature in the name under which he trades is binding on him. Thus, John Smith, trading as "Henry Jones," or as the "Hightown Grocery Stores," may sign "Henry Jones" or "Hightown Grocery Stores," without adding his own name, unless he wishes to do so. But a signature in the latter form is not desirable, and should be discouraged. If Smith wishes to authorise a third party to draw cheques on his account, a written authority is necessary. This will take the form of a printed letter with blanks, which are filled up by Smith, who then signs the letter (see p. 219).

Customers should be discouraged from making avoidable variations in their signatures. It may be necessary after the lapse of a few years to take a fresh specimen of a customer's signature owing to a gradual alteration in his style of signing.

Smith's signature is taken either on a card ruled for the signature, full name, and address, or in a signature book. If the card system is used, the card is placed in alphabetical order amongst those relating to other customers. If the signature is taken in a

book, then the number of the page will have been entered in the index, so that, when necessary, quick reference can be made to the specimen. Under the card system, no indexing is required, and signatures relating to closed accounts can be removed and filed away, leaving only current signatures.

**26. Cheque Books.**—Before a cheque book is handed to Smith, the cashier will enter it in his *Cheque Book Register*. This book should contain a list of all the cheque books on hand at the branch, arranged in groups according to their size or style. The books are entered in order of numbers, and columns are provided for the date of issue and name of customer to whom issued. When Smith requires a new book, he should be requested to sign the requisition form which is bound into the cheque books towards the end. Care should always be taken to see that cheque books are not given to unauthorised persons. Customers should not be permitted to draw cheques on plain paper. Banks supply forms which are specially prepared to render fraudulent alterations difficult to perpetrate without being visible.

In the case of new customers who have not had banking accounts before, opportunity should be taken tactfully to explain to them the correct way to fill up cheques and the meaning of crossings.

**27. Counter Cash Book.**—The Cashier enters Smith's credit slip into his *Counter Cash Book* (or *Tellers Book*), on the left hand or debit side. The following is an example:—

#### COUNTER CASH BOOK.

1st March, 1930.

1st March, 1930.

Name.	Cash.	Bank Notes	Name.	Cash.	Bank Notes
Smith, John	70	15	10		

This form records only coin (including £1 and 10s. notes) and the larger bank-notes, received or paid away. Other forms are more elaborate and give fuller particulars of the items composing the

credit. As soon as the cashier has entered the credit he passes it on to the clerk in charge of the *Waste Book* (see below). The latter enters the bank-notes (of £5 and over) in his *Bank Note Register*, giving date of receipt, name of customer, the numbers of the notes, amount, date and place of issue. Some banks send all bank notes received to London, others reissue them unless too dirty.

28. **Waste Book.**—This book takes various forms. In some banks it gives a complete analysis of the customers' credits, showing the total credit, amount of notes, coin, postal orders, and details of all cheques, the latter being entered in the appropriate columns, Town, Metropolitan, Country or Local. Others merely record details of the cheques received in the customers' credits. Cheques are divided into various classes, according to the manner in which they are cleared (see Chapter XII, Clearing System).

The primary function of a Waste or Remittance Book is to analyse the various cheques paid in by customers into the various groups required for clearing purposes. Thus, in the example given, all cheques drawn on the local banks, i.e. banks in the same town, are entered in a special column, while other columns are provided for Town Clearing cheques, etc. All cheques drawn on other branches and banks must be stamped across the face with the name of the receiving bank and branch, and sent for collection, duly listed on the appropriate slips.

As the systems of banks vary considerably it follows that there are many forms of Waste Books in use, and those required by banks in the Town and Metropolitan areas differ from those required by Country branches. The introduction of machines to post ledgers, supplementary and subsidiary books, is making many changes in forms, but basic principles remain the same.

The following is an example of a Waste Book:—

Customer.	Drawer of Cheque.	Payee.	Bank and Town.	Date.	Total.		Country.
Smith, J.	H. Jones	J.S.	Mid., Oxford	Feb. 27	219	4	6
	A. Brown	„	Barclay, Bristol	„ 28			50
	B. Cooper	„	N.P., H.O.	Mar. 1			
	R. Smith	„	West., Marylebone	„ 1			

It will be observed that this form analyses the whole of the cheques and postal orders and money orders in the credit, and that the total of the right-hand columns must, therefore, agree with the total column on the left. The various columns for Town, Metropolitan cheques, etc., must agree with the lists prepared for dispatch to the Head Office or London Agent.

Some forms provide columns for bank-notes and coin, in which case these columns should agree with the cashier's counter book. If all credits are put through a Waste Book of that kind, then the day's totals will agree with the total shown in the Day Book as having been paid into Current and Deposit accounts, etc. In this way it is possible to balance various sections of the work and so localise errors.

The term "House" is sometimes applied to the column used for entering cheques drawn by a customer of the branch.

**29. Current Account Ledger.**—There still remains the actual opening of the Account. As it is to be an account into which Smith will pay his receipts, and on which he will draw cheques in payment of his trading stocks, etc., the account will be opened in the Current Account Ledger. Having selected a convenient space, the ledger clerk will write across the top of the page in bold handwriting "John Smith." Smith's address, occupation, and page in the signature book (unless the card system is in use) must also be given, together with particulars of any authorities for third parties to sign on the account and of any arrangements for cheques to be cashed at any other branches or banks. If it has been agreed that Smith may overdraw his account, then the amount of the sanctioned limit and its expiry date should also be recorded. The object of recording these and similar facts is to provide the ledger keeper with the information he requires when posting his ledger.

If Smith has been trading as "Henry Jones," then the account

Town.	Metro- politan.	Walks.	Branch Clearing, Agents Clearing, Branch Advice.	Remittance and Sundries, Agents' (direct) H.O. Suspenses.	Cheques on Selves.	Local Clearing, P.O. and P.O.O.
94	50					25 4 6

would have been opened in the latter name, Smith's name being given as the proprietor, or the account may be opened as: "John Smith, trading as Henry Jones." The position would be similar if Smith had been trading as the "Hightown Grocery Stores." A specimen of Smith's manner of signing "Henry Jones," or any other name under which he draws cheques, would also be necessary. If the customer is a partnership or a limited company, then other variations are necessary. These are dealt with under the appropriate headings in Chapter XVI.

John Smith's ledger account will appear as below:—

Signature  
Book, p. 101

JOHN

			Dr.	Cr.
1930				
March	1	By Cash		
	5	To Jones	20	300
		," Self	10	
	10	," Brown	50	
	12			100
	16	," Robinson	40	10
		," Black	20	5
		," Wright	30	
	17			55
		,"		8 6

The uses of most of the columns are obvious, but those relating to "decimals" require some explanation. The days' column is for the number of days the final daily balance has remained unaltered. The decimal columns are for the products of the daily balances multiplied by the number of days they have remained unchanged. There are columns for debit and credit decimals, according to the state of the account. If we add up the decimals given in the example, we find they total 4,500. We assume this figure to represent pounds, and one day's interest on it at the required rate exactly equivalent to the total interest on all the daily balances. In practice, instead of calculating, by means of tables, one day's interest on £4,500, the same result is obtained by working 10 days on £450, or 100 days on £45.

This system is the general way of calculating the interest on a fluctuating account. It may also be mentioned that if the number

of days be divided into the total decimals, the average daily balance can be ascertained.

**30. Day Book.**—All banks employ the double-entry system of book-keeping, and all items must go through a Journal or Day Book. This book is called by some banks the "General Cash Book." A Day Book is usually divided into sundry subsidiary books for the sake of convenience. Thus we find in most banks that there are Current Account Journals or Registers, for items relating to the Current Account Ledgers. And these are again divided into books which deal with names commencing with A to

SMITH

Grocer,  
Hightown Road,  
Blanktown.

Dr. Balance.	Cr. Balance.	Days	Decimals Dr.	Decimals Cr.
	300	4		1 2 0 0
	270	5		1 3 5 6
	220	2		4 4 0
	320	15	4	1 2 8 0
	230	1		2 3 0
	285	8 6		

D, E to H, and so on, to correspond with the ledgers. Entries relating to Head Office Accounts, Deposit Accounts, etc., are also frequently written up in separate sections of the Day Book. Hence, we find that the title of "Day Book" is frequently limited to the book into which the daily totals of the various subsidiary books are collected for the purpose of the daily balance. Every transaction for the day must go through this book, either as a separate item or included in the total from a subsidiary book.

In double-entry book-keeping, every debit has a corresponding credit. It is not always easy, however, to see the contra entry. For instance, take Smith's credit of £300, for which the corresponding entry on the opposite side will consist of part of the balance of the local clearing, in which his local cheque of £25 4s. 6d. was included, while £194 will be debited to Head Office in the total of Town, Metropolitan, and Country cheques sent to London for clearing.

The cash, £80 15s. 6d., will be included in the balance of Cash on Hand brought in to balance the book.

To balance the Day Book, the debit and credit sides are cast up, and the cash with which the day's business was commenced added to the left-hand or debit side, and the cash on hand, to be carried forward to the next day, added to the right hand or credit side. When these are totalled, the two sides should agree. If they do not, then, either the Day Book is incorrectly cast or entered up, or the cash balance is wrong. As regards the latter, the cashier has his own book (Counter Cash Book) which enables him to prove his cash separately.

The following is an example of a suitable ruling for a Day Book :—

In some banks, particularly in large branches, the Day Book is much more elaborate, in order to permit of sectional balancing. Thus one large bank has four columns in its Day Book for Cash, Bills, Transfers, and Totals.

Closely associated with a Day Book is the General or Principal Ledger, which we will consider next.

**31. General Ledger.**—The General or Principal Ledger is the keystone of the branch's book-keeping. Into this ledger are posted the daily totals of all the various classes of entries which go through the Day Book, an appropriate account being kept for each class. Accordingly, in the account entitled "Current Accounts" will be included the entry relating to Smith's credit. The details of the items making up Smith's credit will also be incorporated in the day's totals. Thus, the cash paid in will be included in the Cash Account, while the cheques drawn on other banks and sent to the Head Office will be debited through the Head Office Account.

The General Ledger contains the record of the branch's assets and liabilities, and the balance sheet of the branch is made up from the figures obtained from this ledger. Debit balances represent Assets, and comprise such balances as those on Cash, Loan, Bills Discounted, and Premises Accounts, and also Head Office Account,

if the branch is owed money by the Head Office. Credit balances represent liabilities, and comprise the amounts due by the branch to its depositors and current account holders. If the branch has borrowed money from its Head Office, then the balance on this account will be a liability. The General Ledger contains the Expenses Account (an account for which different banks have various names, such as Charges of Business, General Charges, etc.), and the sundry accounts for Interest, Discounts, Commission, etc. The balances of all these accounts are transferred at the end of the half year to the Profit and Loss Account, which is also in the General Ledger, and the result gives the branch's profit or loss for the period.

For many of the accounts, such as Current, Deposit, Bills Discounted, and Loan Accounts, there are separate ledgers, the balances of which must agree with the balances shown in the General Ledger. The General Ledger should be a book which balances in itself, *i.e.* the total debit balances or totals will equal the total credit balances or totals. The Day Book totals of the left-hand or debit side are posted to the right hand or credit side of the General Ledger, while the totals of the credit side are posted to the debit side of the General Ledger. The reader will remember that payments into the customer's account were entered on the left-hand side of the Day Book, so that the effect is that they appear in the General Ledger on the credit side, which we have already stated shows the branch's liabilities. If the *totals* of the Day Book, before the addition of the cash on hand brought and carried forward, are posted to Cash Account, on the *same* side as they appear in the Day Book, the total of the Cash Account will then equal the combined totals of all the other accounts in the General Ledger. This provides an invaluable check, and makes the General Ledger self-balancing. It is hardly necessary to add that the balance on the Cash Account must be represented by the Cashier's Cash on hand.

The following is a suitable ruling for a General Ledger:—

						Dr.		
						or		
						Cr.		
£	s.	d.	£	s.	d.	£	s.	d.

It is not the intention of this book to give more than a bird's-eye view of bank book-keeping, which is a subject worthy of a book wholly devoted to it. This brief explanation is given to assist those readers who are in special departments of large offices, and who may, therefore, have difficulty in tracing, from their own experience, the course of the ordinary daily transactions.

**32. Pass Books and Statements.**—One more book remains to be considered—the *Pass Book*. This is not a book of account, but merely a copy of the customer's ledger account. It is, however, a very important book, since it is the only book which the customers see, and it should be accurately and neatly written up. Customers must not be permitted to make entries in their pass books.

In order to ensure that the customer shall have frequent opportunity to examine his pass book, a banker should see that the book is sent in to be made up and returned to the customer at frequent intervals. In no case should a pass book be allowed to remain at the bank for any considerable time without the customer having an opportunity of examining it.

When a pass book is given out, the date of dispatch should be marked in the ledger, together with the initials of the clerk who gives it out and is responsible for its accuracy. Owing to the spread of mechanical book-keeping, statements in lieu of pass books are becoming more general. Where used, they should be sent to the customers at frequent intervals. The dates of dispatch should be marked in the ledger. When a pass book is lost, the book replacing it should be clearly marked "Duplicate."

The following is a ruling of a pass book. The date column contains the dates on which the items are entered (*i.e.* posted) in the ledger. The particulars column contains, in the case of cheques drawn by the customer, either the payees' names or the numbers of the cheques, according to the banker's custom or arrangement with the customer.

JOHN SMITH,  
In account with  
The BRITISH BANK, Limited.

DR.

CR.

1930

Mar. 1 By Cash . . . 300

In the form given in the example, it will be observed that John Smith is described as being "in account with the British Bank Limited," and that the amount paid into his credit appears on the right-hand side of the book. Cheques drawn will appear on the left-hand side. Had the heading of the book been in the form,

BRITISH BANK, Limited,  
In account with  
JOHN SMITH,

then the credit items would appear on the left side, and the cheques drawn on the right.

In the former case, the items appear on the same side as they appear in the bank's ledger, while in the latter they are reversed. The latter form represents the account as it would appear in Smith's own ledger, in which the bank becomes his "debtor" for all amounts paid into his account. The form of pass book varies according to districts or the practice of the banks concerned.

The law relating to pass books is not very satisfactory from the banker's point of view. As the law stands, it would appear that entries by the banker are *prima facie* evidence against the banker, but not conclusive evidence. Where, for example, an amount has been wrongly credited to a customer, the banker is entitled to prove that the entry is a wrong one, but he cannot recover his money if the customer can show that, in good faith and relying on the accuracy of the entry, he had been induced to spend more than he otherwise would have spent. It would be a difficult thing for a business man to take up this position, but such a position might very conceivably arise in the case of a private individual into whose account dividends from investments or moneys from his solicitors were habitually paid in direct. The law will not permit any customer fraudulently to take advantage of any mistake made in his pass book.

Great care should therefore be taken in posting items to customers' accounts, and in writing up their pass books. If, after a customer has received his pass book, an error be discovered in his account, he should be notified immediately, and requested to return the pass book for correction. If an account has been wrongly credited and, before notice can reach the customer, cheques are presented which are drawn against the balance (including the amount wrongly credited), the banker must remember that he may become liable to an action for damages to the customer's credit if he dishonours them,

and they prove to have been issued in good faith in ignorance of the mistake.

**33. Deposit Accounts.**—Money placed on deposit may be repayable at so many days' notice (generally seven or fourteen) or on demand, or at the end of a definite period. The customer usually has an acknowledgment in the form of a Deposit Receipt or Deposit Pass Book. But no matter what kind of acknowledgment may be given by the banker, it will not prevent him from debiting the deposit account with any cheques or other instruments afterwards returned unpaid, whether credited to the deposit account or exchanged direct for the customer.

A banker can safely allow his customer to overdraw his current account in reliance on the right of set-off the banker has against the deposit account, *i.e.* the right to combine the two accounts and treat them as one.

Money on deposit due for repayment on a Sunday is payable on the succeeding business day. The interest ceases on the date of expiry of the notice of withdrawal. If no notice is given, it is usual to deduct interest on the amount withdrawn for the period specified for notice. No income tax is deducted from the interest on deposit accounts repayable on demand or at short notice.

Interest may be allowed on Deposit Accounts at an agreed rate, or at the London Bankers' Deposit Rate, which is fixed by agreement between the London Clearing Bankers. In pre-war times this rate fluctuated with the Bank of England Rate of Discount, being  $1\frac{1}{2}$  per cent. below it. For some years after the war, the difference was maintained at 2 per cent., but at present it is again  $1\frac{1}{2}$  per cent.

Deposit Receipts are treated on p. 184.

**34. Specimen and Definition.**—The following is a specimen of a cheque:—

June 4th, 1930

BRITISH BANK, Limited,  
Oxford.

HENRY JONES

### *In settlement*

Pay HENRY JONES

stamp

*of account*

*Ten pounds ten shillings and sixpence.*

or order

£10 10 6

£10 10 6

JOHN SMITH

This is the general form of cheque in use in this country.

John Smith is called the *drawer*—it is his money which is to be paid to Henry Jones; Jones is the *payee*, *i.e.* the person who is to receive the money; the British Bank, Limited, Oxford Branch, is the bank which is instructed to make the payment, and is called the *drawee*. The document before us is expressed in simple and direct language, and without any conditions governing the payment. The instruction, "Pay Henry Jones or order," means that the money is to be paid to Henry Jones himself or to his order, *i.e.* to the person designated by him. How the latter is done we shall learn in the chapter on indorsements.

We can now discuss the following definition given by Dr. Hart in his *Law of Banking*: "A cheque is an unconditional order in writing drawn on a banker, signed by the drawer, requiring the banker to pay on demand a sum certain in money to or to the order of a specified person, or to bearer, and which does not order any act to be done in addition to the payment of money."

The document given above is unconditional and in "writing,"

as according to the Bills of Exchange Act, 1882, which governs cheques, "writing" includes print. It is drawn on a banker. The term "Banker" includes a body of persons whether incorporated, as in the specimen, or not, who carry on the business of banking (Bills of Exchange Act). It is signed by John Smith, the drawer. Furthermore, the document instructs the banker to pay to a specified person, Henry Jones, or to his order, a stated sum in money. There is no mention of the document being payable "on demand," but we find in the Act above mentioned that a cheque is payable *on demand* which is expressed to be payable on demand or at sight, or on presentation, or in which no time for payment is expressed. The last mentioned is the usual form.

We can therefore safely conclude that the document given as a specimen cheque can rightly be called a "cheque." Any document which does not fulfil all the conditions set out in the definition is not a cheque. For instance, a document in the form of a cheque but which reads :

Pay Henry Jones.....or order, the sum named below on the receipt being duly stamped, dated, and signed

is not a cheque, since it is conditional on the completion of a receipt.

A draft drawn by one branch of a bank on the Head Office or another branch is not a cheque, because the document is not drawn by one person on another, the Head Office and the branches of a bank being, in law, but one concern. And as the definition states that a cheque must be "drawn on a banker," those documents issued by borough councils and the like addressed to their Treasurers, who may be, and frequently are, bank officials, are not cheques.

Another form of document often met with is in the form of a receipt which is signed by the person who is to receive the money. Such a document is not a cheque. These forms are dealt with later at greater length.

While any form other than the usual one given as a specimen should be discouraged, a cheque drawn "I, John Smith, request you to pay" would be legally sufficient if written by or under the authority of John Smith, but bankers are justified in returning such cheques marked "Irregularly drawn."

As already stated, the law governing cheques is contained in the Bills of Exchange Act, 1882, a cheque being a bill of exchange pay-

able on demand. Except where specially provided in the part of this Act which relates solely to cheques, the provisions of the Act which are applicable to a bill of exchange payable on demand apply to cheques.

**35. Drawer's Signature.**—In order to be valid a cheque must either bear the drawer's signature or a signature put on by his authority. If, therefore, a banker pays a cheque on a forged or unauthorised signature, he cannot, save in exceptional circumstances, debit its amount to the drawer's account. This is quite reasonable, since the banker has paid away the money without his customer's authority. And it makes no difference to the position whether the forgery was an obvious one or was very skilfully executed.

Accordingly, the first thing a banker does when a person opens an account is to take a specimen of the manner in which the person will sign cheques, and all cheques before being paid are carefully examined.

Persons unable to write at all are not often met with in this country, but if an "illiterate," as such a person is called, has an account, he may draw a valid cheque by making a mark which is duly witnessed. The banker in such a case should insist on the mark being made in his presence and witnessed by a person known both to his customer and to himself. A bank official, particularly the paying cashier, is not a desirable witness. Some banks, in cases where an outside witness is not available, insist on two bank officials acting as witnesses. The address of the witness should always be given. The following is the usual form adopted in these cases:—

His  
John X Smith  
Mark

Witness: Henry Wood, 15, High Street, Northtown.

If a customer is so seriously ill that he cannot sign his name, or, if he did sign, the signature would be so unlike his usual signature that his banker would not accept it without confirmation, the best course is for the customer to make a mark in the place of his signature, and get it witnessed by his doctor and another person. A banker in such cases should also obtain a certificate from the doctor that his patient was in full possession of his faculties and that his inability to sign was due to illness. When a customer, who is so drunk as not to know what he is doing, presents a cheque

over the counter and insists on having cash for it, the banker should have a witness to the payment of the money.

Pencil signatures, though quite valid, should be discouraged. Facsimile signatures impressed by a rubber or other stamp should not be permitted. The drawer need not sign a cheque himself, but if he does not do so, then it must be signed by or under his authority. Hence, when a facsimile stamp is used, the banker has no means of knowing whether the drawer has put it on himself, or whether he has authorised someone else to do so, and every cheque would require confirmation before it could safely be paid.

Forged signatures will be considered later, and we will close this section by discussing the case of a genuine signature, written by a person (either as drawer or indorser) on a cheque or bill, when the signer is under the belief that he is signing a completely different document, or giving his signature for a purpose altogether different. In such a case, provided the signer can prove he has not been guilty of negligence, the signature is null and void, and he is not liable to any person in possession of the cheque. Thus, in one case where an old man with poor sight was induced by fraud to sign a bill of exchange under the impression that he was signing a railway guarantee, it was held that he was not bound by his signature.

An infant, or a corporation having no power to incur liability on a cheque, may draw a perfectly valid cheque, but if the cheque is dishonoured, neither can be sued on the cheque. Either may give a valid indorsement of a cheque, and the holder can enforce the cheque against any party thereto other than the infant or corporation.

**36. Date.**—The Bills of Exchange Act, 1882, states that a cheque “is not invalid by reason only that it is ante-dated or post-dated or that it bears date on a Sunday.” An *ante-dated cheque* is one which bears a date before the date on which it was actually issued, while a *post-dated cheque* is one dated later than its real date of issue. A cheque not dated at all is quite valid, and it appears probable that any holder may insert the date. Bankers usually return undated cheques presented for payment for the insertion of the date. A cheque dated on a Sunday should not be paid until the following business day. If presented on the Saturday previous, the cheque should be returned, marked “Post-dated.” In this respect a cheque differs from a bill of exchange maturing on a Sunday as such a bill is payable on the preceding day.

A cheque which, by mistake, has been given a date not in the calendar, as, *e.g.* November 31st, should be paid on or after November 30th. A cheque must be payable on demand, and if a cheque is presented which bears across its face some such expression as "Postpone payment 10 days," or "Payable October 1, 1922" (a date later than the date of the cheque), it should be returned, marked "Irregularly drawn." As will be seen later, there is an *ad valorem* scale of stamp duties for bills of exchange not payable on demand, or within three days after date or sight, and the document just described would require such a stamp. *Ad valorem* means "according to value."

37. *Post-dated Cheques*.—A post-dated cheque is an exceptional instrument, but as we have already seen, it is quite valid, though it should, strictly speaking, bear the *ad valorem* stamp duty to which bills of exchange not payable on demand or within three days after date or sight are subject. Possibly the drawer renders himself liable to a penalty under s. 5, Stamp Act, 1891, but this would not affect any action on the cheque since no action could be brought on the cheque until its due date, when it would be sufficiently stamped. And its negotiability is not impaired because it is post-dated. For example, A gives B a post-dated cheque, and B, before the date, gives it to C in payment of a debt. C takes the cheque without notice of any dispute between A and B. A stops payment because B has not fulfilled his contract. Nevertheless, C acquires a good title to the cheque, and when the due date arrives, can sue A for the amount of the cheque. The term "negotiability" is explained on p. 35.

A banker should not pay a post-dated cheque until on or after the arrival of its date. Should he inadvertently do so, he runs the risk of losing the money. For instance, if by any chance the indorsement is forged, the banker will not be entitled to the protection conferred on him by the Bills of Exchange Act and cannot, therefore, debit the drawer's account with the payment. Furthermore, if a banker pays and debits a post-dated cheque to the drawer's account, and dishonours cheques which would otherwise have been paid, he will probably be mulcted in damages for injury to his customer's credit. If he holds the cheque pending the arrival of the due date, the customer may stop payment of the cheque, or may fail. If he pays the cheque before the due date, there is authority for saying that, if the drawer objects to his account being debited, the banker stands a good chance of losing the amount.

Accordingly, if a banker finds that a customer is in the habit of issuing post-dated cheques, he should request him either to refrain from so doing, or to close the account, as such accounts are rarely worth the trouble and risk involved.

*38. Stale Cheques.*—By s. 36 (3) Bills of Exchange Act, 1882, a cheque is over-due, or, as it is usually termed, “stale,” when it appears on the face of it to have been in circulation for an unreasonable length of time. But what is “an unreasonable length of time” has never been legally defined. The matter is important, for if a stale cheque is “negotiated” (see below) to another person it can only be negotiated subject to any defect of title affecting it when it was due. The transferee of such a cheque, therefore, takes it subject to equities, *i.e.* he cannot “acquire or give a better title than that which the person from whom he took it had” (Bills of Exchange Act, 1882, s. 36 (2) (3)). One learned authority considers that in the absence of special circumstances a cheque would probably be deemed stale, so far as negotiability is concerned, if it had been issued ten days or so before negotiation.

A cheque, being an instrument payable on demand, is intended for speedy presentation for payment, or for speedy negotiation, and an indorser, therefore, is not liable on a cheque unless it is presented for payment within a reasonable time after his indorsement.

It is necessary to distinguish between cheques considered “stale” in law for purposes of negotiation, and those termed “stale” by bankers’ custom, by which custom cheques presented for payment six or more months after the date of issue are returned, marked “Stale” or “Out of date.” The drawers’ confirmation is required before the banker will pay them. Some banks fix the limit at twelve months. So far as the drawer is concerned, he is liable on the cheque until the right on it is barred by the Statute of Limitations, namely, six years from the date of the cheque, unless he has suffered any loss by the delay, when he is relieved of liability to the extent of such loss, or unless the person in possession of a cheque negotiated when overdue is unable to acquire a title owing to a defect in the title of the person for whom he negotiated it. For instance, if the drawee bank failed between the date of drawing the cheque and the latest date deemed reasonable for presentment and the drawer had a balance sufficient to meet the cheque, then the drawer would be relieved of all liability, and the holder would have to prove against the bank’s assets for the amount of the cheque. This is quite

reasonable, otherwise the drawer would suffer a bigger loss, owing to the holder's delay, than he would have done had the cheque been presented promptly.

The word "negotiation," as used in connection with cheques and bills, means the transferring of the instrument from one person to another in such a manner as to constitute the transferee (*i.e.* the person to whom it is transferred) the holder of the instrument. A holder may be the payee or indorsee of a cheque who is in possession of it, or the bearer thereof.

**39. Amount.**—A cheque may be drawn for any sum of money, large or small, but fractions of a penny, if expressed, are not paid by bankers. The amount must be stated in words, though figures would be valid. For the sake of convenience, it is the practice to state the amount in words and figures, and if, as sometimes happens, there is a discrepancy between the amount expressed in words and that expressed in figures, the former is the amount legally payable. In practice a banker either pays the smaller amount or returns the cheque marked "Words and figures differ." If a cheque has the amount in words only, the banker must pay it, but if the amount is in figures only, the cheque should be returned in accordance with the usual practice, marked "Amount required in words." If the cheque is again presented with the words written, but not in the drawer's handwriting or not initialled by him, the banker would be justified in again returning the cheque, marking it, "Amount in words requires drawer's confirmation."

As a preventive against the fraudulent raising of the amount, some drawers mark their cheques with some such expression as "Under twenty pounds," or "Not exceeding twenty pounds." The paying banker should check these markings carefully, as he might be held liable if he paid a cheque for an amount greater than the limit prescribed by the marking.

Any alteration in the amount of a cheque is material, and must therefore be verified by the drawer, but in practice a cheque altered from a larger to a smaller amount is sometimes paid without verification, provided the alteration in amount is unimportant.

It may happen that the amount has been altered but that the alteration is not apparent. If this is so, then a holder in due course can enforce payment against the drawer for the *original amount*. A "holder in due course" is explained fully later.

Sometimes cheques are carelessly drawn and the sum payable is not accurately expressed. If the wording is intelligible, the cheque

would, in the general way, be paid. For example, a cheque drawn as "Sixteen, four shillings and three pence" can safely be taken to mean £16 4s. 3d., but a cheque reading "twenty four shillings and three pence" would be ambiguous, and would generally be returned for verification, unless the figures read £1 4s. 3d., and this was all the payee claimed.

When a cheque is drawn out of but payable in the United Kingdom and expressed in a foreign currency, the amount, in the absence of a stipulation to the contrary, must be converted into pounds, shillings, and pence, according to the rate of exchange for sight drafts in that currency, at the place of payment, on the day of payment. Thus, a cheque drawn on a London bank for so many French francs would be converted into sterling at the current rate on Paris. In practice, if the payee objects to the rate, he may be offered the paying bank's draft on Paris in francs for the face amount of the cheque. The sterling equivalent is then debited to the drawer's account.

**40. Payee.**—As stated in the definition of a cheque, a cheque must be payable "to or to the order of a specified person, or to bearer." The specimen given at the beginning of this chapter is of an "order" cheque, and in such cheques the payee must be named or indicated with reasonable certainty. Thus, a cheque may be payable to two payees jointly, or, in the alternative, to one or some of several payees, or to the holder of an office for the time being, as, for example, "Pay John Smith and Jane Short or order," "Pay John Smith or Jane Short or order," "Pay Treasurer, Northtown Club or order."

A cheque may be drawn payable to or to the order of the drawer, as "Pay self or order." If it is drawn "Pay to — order," this wording is construed as equivalent to "Pay to my order," and the cheque, therefore, requires the drawer's indorsement. But if the cheque is presented payable to "— or order," then the payee is not indicated with reasonable certainty, and the banker should return the cheque, marking it "Payee's name omitted." A similar answer is required on a cheque drawn in the form "Pay five pounds or order."

When a cheque is presented for payment without any payee's name upon it, the banker is not safe in asking the holder to insert his own name, but if the holder inserts his own name before presentation the banker would probably be protected on the ground that the drawer had misled him, and therefore the drawer would

be precluded from denying that the cheque was not filled up by his authority.

It should be noted that an order cheque in which no payee's name is mentioned cannot be treated as a "bearer" cheque. In fact, it would appear that the absence of a payee's name prevents it being a cheque at all, since it does not fulfil one of the conditions laid down in the definition given earlier in this chapter. Any alteration in the payee's name requires the drawer's confirmation.

A payee is not liable on a cheque to any subsequent holder until he (the payee) has indorsed it, and, in the case of alternative payees, only those who indorse incur the liabilities of an indorser. The liabilities of indorsers and indorsements are considered in the next chapter.

If the wording on a bearer cheque reads "Pay bearer," or "Pay John Smith or bearer," no indorsement is required, and a person who has not indorsed such a cheque cannot be sued on the bearer cheque by a subsequent holder. He would, however, be liable in the event of forgery prior to the transfer, because being what is termed a "transferor by delivery," he is held to warrant that the document is what it purports to be. This expression will be explained fully later.

**41. Alterations.**—All material alterations in a cheque must be made with the drawer's assent, which should be evidenced by his signature or initials placed close to the alteration. The full signature is preferable. Any material alteration made without his assent renders the cheque void. If the cheque is signed by two or more persons, then all must join in the confirmation. Alterations in cheques drawn by limited companies and other corporate bodies must be confirmed not only by the secretary or similar official but by all the signatories.

Material alterations include all those of the date, amount, crossing, place of payment, and name of payee. An order cheque may be turned into a bearer cheque by the drawer substituting the word "Bearer" for "Order" and initialling the alteration. No other person has power to make this alteration. But any holder may alter a bearer cheque to an order cheque by simply striking out the word "bearer," when the cheque automatically becomes an "Order" cheque. The drawer's verification is not necessary.

As already stated, a material alteration made without the drawer's consent renders the cheque void, and, if a banker pays such a cheque, he does so at his own risk. A banker cannot debit the

customer's account with money he has paid away without the customer's authority.

It may be added that if there are any indorsers, their assent to any material alteration made after the cheque has been in their possession must also be obtained, or else they will be discharged from liability. An example of an unauthorised material alteration sometimes arises when a customer's account has been transferred to another branch and outstanding cheques are presented, for which no arrangement has been made. The first branch should not alter the town from its own to that of the other branch, as such an alteration without the assent of all the parties renders the cheque void, and if it were subsequently dishonoured, difficulty might arise. The proper course in such circumstances is to return the cheque marked, "Drawer's account transferred to ---- branch."

**42. Mutilated Cheque.**—A banker must not pay a cheque which indicates that the drawer had intended to annul it, unless it bears the drawer's confirmation, or, in cases where the mutilation has been accidental, the confirmation of a banker. If such a cheque is presented for payment without the confirmation of the drawer or a banker, the paying banker should return it marked "Mutilated cheque." If he does not do so, he must bear the loss should it be proved that the drawer had cancelled the cheque by tearing it up, and that the pieces had subsequently been pasted together without his authority.

**43. Stamp.**—The stamp duty on a cheque, no matter what the amount may be, is two pence. The stamp or stamps may be impressed or adhesive. If adhesive, a twopenny stamp, or stamps equivalent in value can be affixed. If impressed, the ordinary twopenny stamp may be used, but probably not the twopenny appropriated "Bill or Note" stamp, which is applicable only to the *ad valorem* duties on bills of exchange payable otherwise than on demand, or within three days after date or sight. Adhesive stamps must be cancelled by the drawer before he issues the cheque. Every person who refuses or neglects duly and effectually to cancel the stamp or stamps on a cheque renders himself liable to a penalty of £10.

If an unstamped cheque is presented to the banker upon whom it is drawn, he may affix and cancel an adhesive twopenny stamp or its equivalent, and either charge the duty to the drawer's account or deduct it from the sum to be paid. So far as *inland* cheques are concerned, the drawer and paying banker are the only persons

authorised to affix and cancel the necessary stamp. In a case decided in 1890, it was held that an intermediate holder could not effectively stamp a cheque which came into his possession unstamped, and, moreover, that a transferee, who gave value for a cheque stamped by someone not entitled to do so, could not recover on it, even though he had no knowledge of the fact. The same rules apply to the affixing of an additional penny stamp in cases where the cheque already bears one penny stamp, *i.e.* the drawer and the paying banker are the only persons authorised to affix it.

To ensure that cheques shall be duly stamped, the Stamp Act, 1891, enacts that every person who issues, indorses, transfers, negotiates, or presents for payment any cheque not duly stamped shall not be entitled to recover upon it and shall be liable to a fine of £10.

When a cheque is drawn out of the United Kingdom the first person in the United Kingdom into whose hands it comes must, before he negotiates it, affix and cancel the necessary stamp, and any *bona fide* holder of such a cheque may cancel a stamp already affixed and can recover on the cheque, even though it appears that the stamp was not affixed by the proper person.

For the purposes of the Stamp Act (but not for the purposes of the Bills of Exchange Act, 1882) cheques drawn in the Channel Islands and the Isle of Man are foreign cheques, whilst those drawn in the Irish Free State are inland for stamping but foreign for other purposes. (See also p. 290.)

44. *Exemptions from Stamp Duty.*—Some cheques are by statute exempt from stamp duty. Such are cheques drawn by officials in Government departments, when disbursing public money, and the cheques of other public officials, such as Trustees in Bankruptcy, Registrars of County Courts, when drawn in the discharge of their public duties. Cheques drawn by Registered Friendly Societies are also exempt. Hence cheques issued by the treasurers of Oddfellows' Lodges (which are registered as Friendly Societies) are exempt, while the cheques of Masonic Lodges are not. But cheques drawn by Local Authorities, such as Municipal Corporations, Education Authorities, Urban District Councils, etc., must be stamped in the usual way; and so must the cheques of County Councils drawn for all purposes, including those of Poor Law.

A customer's order to transfer money from one account to another, whether deposit or current account, and whether at the same or different branches of the same bank, does not require stamping. But if he transfers money from his own account to the account

of another person, whether at the same branch or at another, then the order must be duly stamped. A stamp is also required on an order which gives written authority to debit an account periodically with a stated sum to be paid away or transferred to another person's account, but the periodical debits made out by the banker need not be stamped, unless they are signed by the person who receives the money and are liable to the receipt duty.

45. *Receipt on Cheque.*—A receipt on a duly stamped cheque for £2 and upwards requires a twopenny stamp, and if a cheque is indorsed in some such terms as "Received without prejudice," or "Received Cash," a receipt stamp is also required if for £2 or over. A receipt given by a banker on a bill or cheque is exempt, provided it is given "in the ordinary course of his business as banker." A banker can, for instance, indorse on a bill, "Received in part payment . . . , " etc. without having to put on a receipt stamp.

Receipts given by the Treasurer for moneys paid to him for the credit of the Poor Law accounts are also exempt from stamp duty. A receipt given for a donation or subscription to an institution or society wholly devoted to charitable purposes need not be stamped, as the Board of Inland Revenue do not exact a penalty if unstamped. Receipts for salaries and wages are also exempt.

46. *Lost Cheques.*—Difficulties sometimes arise when a cheque is lost, and, to meet this, the Bills of Exchange Act provides that the holder, on giving security to the drawer, can demand from him a duplicate cheque. And in any action or proceeding upon a cheque, the Court or a judge may order that its loss shall not be set up, provided an indemnity be given to the satisfaction of the Court or judge against the claims of any other person upon the instrument.

The drawer should always insist on his rights, and obtain a proper indemnity against the claims of third parties, for if the cheque, whether crossed or uncrossed, is a negotiable one, *i.e.* a bearer cheque, or an order cheque duly indorsed (and not crossed "not negotiable") and the finder transfers it to a person who takes it honestly and for value, such transferee can compel payment from the drawer. In such circumstances, the drawer would have to honour both the original and the duplicate, hence the necessity for an indemnity on which the drawer could recover if required, the loser of the cheque bearing the loss.

When a cheque payable to order, whether crossed or uncrossed, is lost and, getting into wrong hands, an indorsement is forged, the

person in possession, however innocent and even if he has given value to the finder, cannot recover on the cheque against the drawer. This is because the Bills of Exchange Act states that no rights can be acquired through a forged signature. It should be noted that the person in possession of a bill or cheque who claims under a forged indorsement is not a "holder."

If the lost cheque, whether payable to bearer, or to order, and in the latter case, whether or not duly indorsed, is crossed "not negotiable," an innocent person in possession (who has given value) cannot enforce payment from the drawer. This is again due to an express provision in the Bills of Exchange Act, under which no person can give a better title to a cheque crossed "not negotiable" than that which the person had from whom he received it. Hence, as the finder has no title, his transferee can have none. For this reason, therefore, persons should, whenever possible, cross their cheques "not negotiable."

So far as an innocent transferee is concerned, his right to enforce payment depends on there being no forgery of a necessary indorsement, and on the cheque not being a "not negotiable" crossed cheque. If he has received payment under a forged indorsement, or of a "not negotiable" crossed cheque, he will be liable to the true owner, *i.e.* the person to whom the cheque or its proceeds rightfully belong.

Immediately a cheque is lost, the loser should notify all parties to the cheque and request the drawer to give notice to the drawee-banker to stop payment (see also p. 76).

47. *Liability for Loss of Cheques, etc., in the Post.*—When a cheque or other negotiable instrument is lost or stolen during transit, and is presented and paid, the question as to who is to bear the loss is not always easy to settle. The Postmaster-General disclaims all responsibility for any loss or inconvenience which may arise from the "loss, damage, delay, non-delivery, or mis-delivery of anything sent by post, and he does not, in any circumstances, pay compensation in respect of unregistered letters. . . ." Hence the responsibility rests between the sender and the person to whom the cheque is sent, and of these, the one whose agent the Post Office is deemed to be must carry the liability. In the general way, the Post Office is the agent of the sender, and when this is so, it follows that he must take the risk of his remittance not arriving safely. But if the creditor says definitely, "send me a cheque by post," then the Post Office becomes agent of the

creditor, and he must bear the consequences. Delivery to the Post Office is constructive delivery to him, and as the property in the cheque passes to him as soon as it is posted, he cannot evade liability for any loss that may ensue.

Unfortunately, however, the question is rarely so clear as in the example given, and the point may, and often does, depend on attendant circumstances and the course of business between the parties. In the creditor's favour, and, therefore, against the assumption that he has constituted the Post Office his agent, it must be remembered that, in law, the debtor must seek out his creditor, and the Courts have not shown themselves sympathetic towards any attempt to fix the creditor with having constituted the Post Office his agent, and thus make him bear any loss that may ensue through wrong delivery or non-delivery by the agent.

But even if it be proved that the Post Office was the agent of the creditor, it must also be shown, in order to fix the liability for any loss upon him, that the cheque sent to him by post was sent in accordance with the conditions (if any) that accompanied his request for a remittance. And these conditions may be expressed or implied from previous dealings between the parties. For example, the creditor may have said, "Please cross all cheques Lloyds Bank, Limited, account Payee." If in the face of such instructions the debtor were to send a cheque crossed in any other way, or not crossed at all, or even were to send the cheque by hand, when asked to send it by post, he would be unable to fix the liability on the creditor should the cheque be lost in transit. But if the Post Office is the agent of the creditor and the debtor carries out in their entirety the conditions, then, if the cheque is lost and paid, the debtor is discharged both on the cheque and on the debt.

**48. Payment by Cheque.**—A creditor cannot be legally compelled to accept anything but legal tender in discharge of a debt due to him, and since neither a bill of exchange nor a cheque is legal tender, he is not bound to accept either of these instruments as a means of payment, unless it is a part of the contract between the parties that this method of payment shall be employed. But if a bill or a cheque is tendered to him as payment, and he does not at the time raise any objection, then this method of payment will, if the instrument be duly honoured, operate as an effectual discharge of the debt. The condition given here is explained by the fact that, in the general way, any payment, which is not in legal tender, is a

conditional payment, *i.e.* the discharge of the debt is conditional upon the instrument being duly honoured upon presentation.

There are other important points for the creditor to bear in mind when he accepts a cheque in payment of a debt. His right to sue the debtor on the debt, in payment of which he has taken the cheque, is suspended until he has actually presented the cheque and failed to obtain payment. This, in the general way, is a small matter, but if he has accepted a post-dated cheque or a bill payable at future date, the matter may be of importance. Furthermore, if the creditor fails through his own negligence in obtaining payment, then the debtor will be discharged both on the debt and on the instrument. Thus, if a cheque drawn by a third party in favour of the debtor is taken, and the creditor fails to give due notice of its dishonour (if such be the case) then the debtor will be wholly discharged. But if the debtor is the drawer of the cheque, then he is liable on it for six years from its date, except to the extent of any damage he may have suffered through any delay in presentation for payment. This point has already been explained.

When once a cheque sent by a debtor in payment of a debt has been in the possession of a creditor, and has been paid by the drawee-banker "in due course" (see p. 79), then the debtor is fully discharged from his debt. And this is true, even if the creditor himself has lost the cheque, and it has been paid to someone else. But if the banker has not paid the cheque "in due course" he (the banker) is liable to the creditor, *i.e.* the true owner.

A cheque remains the property of the holder until it is paid, when the property in it reverts to the drawer, though the banker is entitled to possession of a paid cheque as a voucher until the account between him and his customer, the drawer, has been agreed.

## CHAPTER IV

### INDORSEMENTS \*

**49. Bills of Exchange Act, 1882, as regards Indorsements.**—A bill or cheque † drawn payable to order must be indorsed by the payee or indorsee before it can be negotiated, *i.e.* “transferred from one person to another in such a manner as to constitute the transferee the holder of the bill” (s. 31 (1)). And the indorsement must be “completed by delivery” of the instrument (s. 31 (3)). If the holder of an order cheque transfers it for value without indorsing it, the transfer gives the transferee such title as the transferor had in the cheque, and, in addition, the right to have the indorsement of the transferor (s. 31 (4)).

**50. The Requisites of a Valid Indorsement.**—S. 32 gives these as follows:—

“An indorsement in order to operate as a negotiation must comply with the following conditions, namely—

(1) “It must be written on the bill itself and be signed by the indorser. The simple signature of the indorser on the bill, without additional words, is sufficient. An indorsement written on an *allonge*, or on a ‘copy’ of a bill issued or negotiated in a country where ‘copies’ are recognised, is deemed to be written on the bill itself.”

An *allonge* is a slip of paper gummed or pasted on a bill to provide space for any indorsements that will not go on the bill itself. Sometimes a “copy” of the bill is used for such a purpose. *Allonges* are not common in this country. Indorsement comes from the Latin *in*, upon, and *dorsum*, the back, and, as the derivation suggests, the usual place for an indorsement is upon the back of the instrument, and it is expedient that all instruments should

\* This may be spelt either “indorsements” or “endorsements.”

† Bill or cheque for the purposes of this chapter can be regarded as interchangeable, except where the contrary is stated.

be so indorsed, but there is no legal prohibition against an indorsement on the face of the instrument.

S. 32 further says:—

(2) “It must be an indorsement of the entire bill. A partial indorsement, that is to say, an indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the bill to two or more indorsees severally [i.e. separately], does not operate as a negotiation of the bill.

The following indorsement on a bill for £100 would be a partial indorsement: “Pay J. Jones or order seventy pounds.”

S. 32 continues:—

(3) “Where a bill is payable to the order of two or more payees or indorsees who are not partners all must indorse, unless the one indorsing has authority to indorse for the others.

(4) “Where, in a bill payable to order, the payee or indorsee is wrongly designated, or his name is misspelt, he may indorse the bill as therein described, adding, if he think fit, his proper signature.

(5) “Where there are two or more indorsements on a bill, each indorsement is deemed to have been made in the order in which it appears on the bill, until the contrary is proved.

(6) “An indorsement may be made in blank or special. It may also contain terms making it restrictive.” (See below.)

51. *Classification of Indorsements.*—There are five kinds of indorsements: conditional indorsements, indorsements in blank, special indorsements, restrictive indorsements, and partial indorsements. These are all governed by ss. 32, 33, 34, and 35. Partial indorsements are treated in s. 32 (2), which has been given above.

52. *Conditional Indorsements.*—A conditional indorsement is one which makes the transfer of the property in a bill from the indorser to the indorsee dependent on the fulfilment of a stated condition. “Where a bill purports to be indorsed conditionally, the condition may be disregarded by the payer, and payment to the indorsee is valid whether the condition has been fulfilled or not” (s. 33). But as between the indorser and the indorsee, the latter holds the money in trust for the former until the condition is fulfilled. An example of a conditional indorsement would be “Pay J. Jones on his marriage with Ada Brown.”

53. *Indorsements in Blank and Special Indorsements.*—S. 34 runs as follows:—

(1) “An indorsement in blank specifies no indorsee and a bill so indorsed becomes payable to bearer.

(2) "A special indorsement specifies the person to whom, or to whose order, the bill is to be payable.

(3) "The provisions of this Act relating to a payee apply with the necessary modifications to an indorsee under a special indorsement.

(4) "When a bill has been indorsed in blank, any holder may convert the blank indorsement into a special indorsement by writing above the indorser's signature a direction to pay the bill to or to the order of himself or some other person."

Thus, if an order cheque be payable to John Smith and he simply writes his name on the back of it, his indorsement is an indorsement in blank, and the cheque thereupon becomes payable to bearer and is then transferable without any further indorsement. But if John Smith were to write above his indorsement the words "Pay Henry Jones," his indorsement is a special indorsement, Jones being indorsee. Jones's indorsement is now necessary to complete the discharge of the instrument. The holder of an order cheque (not payable to himself) may convert a blank indorsement into a special indorsement by writing his transference's name above the indorser's signature, and thus make the cheque payable to his transference without incurring himself the liabilities of an indorser.

54. *Restrictive Indorsements*.—S. 35 is as follows:—

(1) "An indorsement is restrictive which prohibits the further negotiation of the bill or which expresses that it is a mere authority to deal with the bill as thereby directed and not a transfer of the ownership thereof, as, for example, if a bill be indorsed 'Pay D only,' or 'Pay D for the account of X,' or 'Pay D, or order for collection.'

(2) "A restrictive indorsement gives the indorsee the right to receive payment of the bill and to sue any party thereto that his indorser could have sued, but gives him no power to transfer his rights as indorsee unless it expressly authorises him to do so.

(3) "Where a restrictive indorsement authorises further transfer, all subsequent indorsees take the bill with the same rights and subject to the same liabilities as the first indorsee under the restrictive indorsement."

55. *Liabilities of Indorser*.—An indorser is not liable on a bill until he has indorsed it, but when he has done so he is subject to the liabilities defined by s. 55 (2), which states:—

"The indorser of a bill by indorsing it—

(a) "Engages that on due presentment it shall be accepted

and paid according to its tenor, and that if it be dishonoured he will compensate the holder or a subsequent indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken." "According to its tenor" means "according to the terms and contents of the bill."

(b) "Is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous indorsements ;

(c) "Is precluded from denying to his immediate or a subsequent indorsee that the bill was at the time of his indorsement a valid and subsisting bill, and that he had then a good title thereto."

S. 56. "Where a person signs a bill otherwise than as drawer or acceptor, he thereby incurs the liabilities of an indorser to a holder in due course."

Where a person indorses a bill in a trade or assumed name, he is liable thereon as if he had signed it in his own name. If a cheque is indorsed by a firm, the signature of the name of the firm is equivalent to the signature by the person so signing of the names of all persons liable as partners in that firm (s. 23). Where a cheque is indorsed by a minor or corporation having no capacity or power to incur liability on a cheque, the indorsement will entitle the holder to receive payment of the instrument and to enforce it against any other party thereto (s. 22).

S. 16 gives an indorser the right to insert any express stipulation negativing or limiting his liability to the holder. Thus, if an indorser wants to get rid of his liability in the event of the cheque being dishonoured, he can do so by writing the words "*Sans recours*," or "Without recourse to me," after his indorsement. But this will not save him from liability should there have been a forgery in the instrument prior to his indorsement. This section is the banker's authority for paying cheques indorsed "*Sans recours*." By the same section an indorser may also insert a stipulation "waiving as regards himself some or all of the holder's duties." And by s. 31 (5), where any person is under obligation to indorse a bill or cheque in a representative capacity, he may indorse the instrument in such terms as to negative personal liability. Any holder may strike out any indorsements. If he does so of set purpose and not by mistake, the indorser whose signature is struck out, and all subsequent indorsers, are discharged from all their liabilities on the instrument.

**56. The Significance of an Indorsement.**—It has already been

stated that a cheque payable to order must be indorsed by the payee or indorsee before it can be transferred to another person. The transferor, by his act of indorsing the cheque, warrants to his immediate transferee and to any subsequent holder, that when the cheque left his hands he had a good title to it, that it was a genuine one in every particular at the time of his indorsement, and that any indorsements on it previous to his own were genuine indorsements. He also engages to compensate any subsequent holder if the cheque should be dishonoured, provided that the procedure necessary on dishonour is duly followed by that holder. Moreover, when a banker pays an order cheque, the indorsement supplies the necessary evidence that he has fulfilled his customer's instructions, and he can then look upon the cheque as a voucher of discharge in the account between him and his customer. S. 24 declares that a forged or unauthorised signature on a bill (which includes a cheque) is wholly inoperative, and that no right to give a discharge therefor or to enforce payment against any party thereto can be acquired through or under the forged signature. Accordingly, the banker is vitally concerned with the genuineness of the indorsements on a cheque, other than one payable to bearer, whether he be the paying banker, *i.e.* the banker who pays the money, or the collecting banker, *i.e.* the banker to whom the money is paid.

As we have seen, the paying banker is bound to know whether the drawer's signature is genuine or not, but he cannot be expected to know the signatures of the indorsers of his customer's cheques. If, therefore, a banker innocently pays a cheque bearing a forged or unauthorised indorsement, he is entitled to some protection. This protection (which applies to a cheque only) is afforded him by s. 60, provided that he pays the cheque in good faith and in the ordinary course of his business, and that the indorsement purports to be the indorsement of the payee or indorsee. But to be a good discharge for the banker the payment must be made through or under an indorsement which purports to be in order, even though it is, in fact, a forgery or made without authority.

And here comes the question: What is an indorsement? The answer is, unfortunately, not to be found in the Bills of Exchange Act. S. 32 (1) declares that the simple signature is a sufficient indorsement, but it does not define what a signature is. In the absence of definition, the banker himself must decide whether a particular indorsement "purports to be" an indorsement by or with the authority of the payee or indorsee. There are a few decided

cases to help him, but in the main he has to rely upon banking and mercantile custom. It may be added that the payee's signature to a receipt form on a cheque does not constitute an indorsement within the meaning of the Act, even if the cheque bears on it the statement that the signature will be accepted as an indorsement or that no further indorsement is required.

Since the paying banker has not what is called "privity of contract" with the presenter of the cheque, but is responsible solely to his customer, the drawer, it follows that in all cases of reasonable doubt the banker is quite justified in returning a cheque for verification of the indorsement. But when returning the cheque he must be careful to mark it so as not to damage the drawer's credit. It must not be forgotten that the banker's statutory protection is only applicable to cheques, and, therefore, if he pays a bill of exchange made payable at his bank on a forged indorsement, he must bear any loss that may ensue.

The paying banker is protected by ss. 60 and 80, and the collecting banker is protected by s. 82. By s. 82, if the collecting banker receives payment of a crossed cheque for a customer in good faith and without negligence, he is not liable to the true owner, even though it should turn out that the customer has no title to the cheque, or a defective title. It must be noted, however, that the collection must be made in good faith and without negligence. It has been held that a banker would be guilty of negligence if he failed to detect that an indorsement did not correspond with the name of the payee on the face of the cheque (*Bavins Jr. & Sims v. London & South-Western Bank*, 1900), and if the cheque is indorsed *per pro.*, it behoves him to see that the person so signing has not exceeded the scope of his authority. But apart from any question of liability for negligence, the collecting banker should make it his business to check all indorsements, as by so doing he may save the trouble and delay in payment caused by the return of cheques bearing irregular indorsements.

**57. General Considerations.**—In order that the banker may obtain statutory protection, an indorsement must purport to be written by the payee or indorsee, or to be put on by his delegated authority. The literal contents of the indorsement, moreover, must, as far as possible, exactly reproduce the name or designation of the payee or indorsee as described on the face of the cheque, or in the special indorsement on the back. If the name of the payee or indorsee is wrongly spelt, the indorsement must literally follow the wrong spell-

ing, but the payee or indorsee may, if he so wishes, add his correct signature underneath. He need not sign his full name; his Christian name or names may be indicated by initials, but if he signs his full name, it must be spelt exactly in the same way as the name on the face of a cheque. If a cheque is made payable, *e.g.*, to "Mr. Smith," he must add his Christian name or names, or initials representing them, to his surname. The surname alone is not a sufficient signature in this country, unless the signer is a peer of the realm.

Reasonable interpretation of an anomalous description is permissible. For example, if a cheque is made payable to "Messrs. S. J. Smith," a designation which suggests two or more persons named S. J. Smith, the cheque would be correctly indorsed as "S. J. and S. J. Smith" in one handwriting, or "S. J. Smith" and "S. J. Smith" in two handwritings. If an agent indorses, he must state his authority in his indorsement. All alterations in an indorsement should be confirmed to the satisfaction of the paying banker.

If a cheque is presented indorsed in characters other than Latin characters, *e.g.* Russian or Arabic, Sir John Paget considers that the paying banker is entitled to return the cheque with the answer "Indorsement illegible," or "Indorsement requires confirmation," unless he is satisfied "that the Oriental characters represent the equivalent of the name of the person whose indorsement is necessary." An indorsement in Latin characters underneath the indorsement in Arabic, etc., should only be accepted when confirmed by a banker, or properly verified by a notary.

The indorsement of a payee need not be first in order of place on a cheque bearing more than one indorsement. It is sufficient if the indorsement is there. A cheque payable to a fictitious or non-existing person may be treated as payable to bearer (s. 7 (3), Bill of Exchange Act, 1882).

No hard and fast rules can be laid down which will meet all cases. The banker must use his own judgment and his knowledge of the general practice of bankers. By such means he should have no difficulty in satisfying the canon laid down in the Bills of Exchange Act that the cheque must "purport to be" indorsed "by or under the authority" of the proper person. And, as already stated, if he is not satisfied that a particular indorsement is a proper indorsement, he is always entitled to demand confirmation of it.

58. *Additions to Payee's Name.*—If a cheque is made payable to "The Blanktown Colliery, per J. Smith," the indorsement "J. Smith" is not sufficient. His indorsement must state that he signs on behalf of the company. And a cheque made payable to "J. Smith, per H. Brown," and indorsed "J. Smith," should not be accepted without confirmation. And the indorsement on a cheque made payable to "J. Smith, a/c H. Brown," or "J. Smith, for H. Brown," should in each case follow exactly the wording on the face of the cheque. In these cases Smith appears to be Brown's agent, and Brown's name, therefore, must not be omitted from the indorsement. Moreover, Smith, being an agent, must not be permitted to delegate his authority. A cheque drawn "Pay a/c of J. Smith" is irregularly drawn, but would be paid if indorsed by the collecting banker to the effect that it had been credited to J. Smith's account. A cheque drawn in favour of "The bearer, my wife," or "The bearer, my wife, or order," should be indorsed by the wife. A cheque made payable to "Bearer (J. Smith) or order" should be indorsed by J. Smith.

If a cheque is made payable to "J. Smith only," it must be paid to the specified payee only, and to no other, as the cheque is no longer a transferable one. If presented over the counter the paying banker would require verification that the person presenting it was the person intended by the drawer to receive the money. And if such a cheque is presented through another bank the paying banker would require confirmation of the indorsement so as to make certain that the money is going to be paid into the rightful person's account.

59. *Impersonal and Anomalous Payees.*—It is very doubtful whether such cheques as those made payable to "Wages or order," "Cash or order," come under s. 7 (3), *ibid.*, which declares that a cheque made payable to "a fictitious or non-existing person may be treated as payable to bearer." In fact, they may not be "cheques" at all. Bankers usually require the drawer's indorsement before cashing them, or only pay them to the drawer or to his known agent. If, however, a banker has been accustomed to treat such cheques as payable to bearer, he cannot, except after due notice, refuse to cash them, without incurring liability to his customer.

Cheques drawn payable to impersonal payees such as (a) "Income Tax or order," (b) "Borough Rates or order," (c) "Canadian Government 4 % Loan or order," must on no account be treated as payable to bearer. The banker would require in example (a) the official

indorsement of a Collector of Inland Revenue; in (b) that of the Borough Treasurer or Chief Rate Collector; in (c) that of some official authorised to give a discharge on behalf of the Canadian Government Loan.

60. *Cheques Presented by Payee*.—An open cheque, payable to "John Smith or order," is payable either to John Smith or to his order. That is to say, he can get the money himself by presenting it to the drawee-banker, or he can transfer the cheque to another person by indorsing it. If he elect to cash it himself, it appears that legally the cheque does not require an indorsement. But, nevertheless, bankers usually require the payee's indorsement before handing over the money. If the payee insists on his legal right to payment of the cheque without his indorsement, the best course for the banker to pursue would be to demand from him a receipt for the money, stamped if for £2 or over. A person who refuses to give a receipt for an amount requiring stamp duty renders himself liable to a penalty of £10.

61. *Indorsement not in Payee's Handwriting*.—If the banker is aware that the indorsement on a cheque is not in the payee's handwriting, he is entitled to verification, but he cannot insist on the indorsement being in the handwriting of the payee (Bills of Exchange Act, 1882, s. 91 (1)). Where bills of exchange are drawn by a firm and made payable to their own order, it is a common occurrence for one partner to draw the instrument, and another partner to indorse it. But, though the handwriting differs, the banker would not on that account refuse payment of the bill, unless he had good reason to doubt the genuineness of the signatures.

62. *Indorsement in Pencil*.—Legally, an indorsement may be either in pencil or in ink; but a pencil indorsement is undesirable, owing to its "liability to obliteration and the impossibility of proving it when so obliterated" (*Geary v. Physic*, 1826). Some bankers insist on an indorsement in ink; others raise no objection to a pencil indorsement. Where a pencil indorsement is followed by other indorsements in ink, showing that the cheque has since been negotiated, the paying banker should not refuse payment of the cheque. (See *Questions on Banking Practice* for information on this and other points raised in this chapter.)

63. *Indorsement Wholly by Impressed Stamp*.—An indorsement made wholly by means of an impressed stamp, purporting to be a *facsimile* of the payee's signature, is legally valid if put on by or under the authority of the payee. Since, however, the paying

banker cannot be expected to know whether the stamp has been impressed by the proper person or not, the Council of the Institute of Bankers state that they think it desirable that such a method of indorsement "should be discouraged as far as possible, on account of the facilities which the method offers to fraud, and the difficulty of obtaining satisfactory proof—which a banker is fairly entitled to demand in such cases—that the stamp has been impressed by authority." Payment without confirmation of an indorsement of this kind would probably, if such a case came before the Courts, be held to be a payment out of "the ordinary course of business" within the meaning of s. 60, and so would deprive the banker of his statutory protection.

64. *Indorsements with Courtesy Titles.*—Indorsements that include a courtesy title, though legally valid, are not usually accepted in this country. Such a form of signature is unusual, and therefore undesirable, and a banker would be quite justified in returning a cheque so indorsed for confirmation. Indeed, it is possible that he would incur liability if he paid it without confirmation. Thus, indorsements such as "Mr. J. Smith," "J. Smith, Esq.," "Capt. J. Smith," "Dr. J. Smith," should not be accepted, but such indorsements as "J. Smith, Capt.," or "J. Smith, M.D.," would be quite in order, as the expressions added in these cases are merely descriptive. The plain indorsement "J. Smith" by the officer or the doctor would suffice. Generally speaking, foreign indorsements that included a courtesy title would be in order, as such indorsements are quite regular in many foreign countries; but the banker would be justified in demanding confirmation. An agent signing *per pro.* sometimes attaches a courtesy title to his principal's name, and such indorsements are usually passed. Thus "*per pro.* Mr. John Smith, H. Brown" would be a good discharge.

65. *Indorsements of Married Women.*—Cheques drawn payable, say, to "Mrs. John Smith" require Mrs. Smith's usual signature, followed by an expression showing that she is Mrs. John Smith. Thus "Alice Smith, wife of John Smith," or "Alice Smith, widow of the late John Smith," would be quite in order. If the cheque is made payable to "Mrs. Smith" it should be indorsed preferably, say, "Alice Smith," but "A. Smith" is quite in order. If the cheque is drawn payable to a married woman in her maiden name, she should indorse, say, "Alice Smith (*née* Jones)."

66. *Indorsements of Official Payees.*—When the payee is so described as to indicate that the money is paid to him in his

official or fiduciary capacity, his indorsement must include a statement of that capacity. Thus a cheque made payable to "John Smith, Treasurer of the Blanktown Union," is not correctly indorsed "John Smith." Similarly, a cheque payable to "John Smith, Trustee," must be indorsed "John Smith, Trustee." But if the cheque were payable to "John Smith," who happens to be the Secretary of the Blanktown Gas Company, he must not indorse it "*per pro.* The Blanktown Gas Company, John Smith, Secretary." The cheque purports to be payable to John Smith in his private capacity, and the indorsement "John Smith" is all that is required.

67. *Indorsements of Agents.*—S. 91 (1), Bills of Exchange Act, 1882, provides that "when, by this Act, any instrument or writing is required to be signed by any person, it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written thereon by some other person by or under his authority." An agent is considered as the mere instrument of his principal. A paying banker runs no risk if he pays a cheque *purporting* to be indorsed by a duly authorised agent of the payee, and he will not be liable if it turns out that the person so indorsing had gone beyond the scope of his authority. But the indorsement of the agent must contain an implication that he is signing on behalf of his principal. The usual form is a *per procurationem* signature. An indorsement *per procuration* (abbreviated *per pro.* or *p.p.*) indicates that the person signing is acting with authority—"limited authority," it is true (s. 25, Bills of Exchange Act, 1882), but sufficient to warrant the paying banker's acceptance of the indorsement without inquiry. But if the paying banker has reason to doubt the authority of a person signing *per procuration*, he is entitled to postpone payment until he has satisfied himself that the authority is in order. Section 25 covers other forms of indorsement by delegated authority, and is not limited to *per procuration* signatures (see below).

Generally, an indorser having an agent's powers would sign thus: "*per pro.* John Smith, H. Jones"—Smith being the principal and Jones the agent, but the less common form "H. Jones *per pro.* John Smith" appears to be legally correct, but as this form is not customary in England, it is considered that a banker would be justified in asking for confirmation. (See *Journal of the Institute of Bankers*, 1917, p. 176, for a discussion on this point.)

There are other forms of agents' indorsements besides the usual *per pro.* form. For example, the following indorsements on a cheque payable to "John Smith" would be accepted: "John Smith, *per*

Henry Jones, Agent"; "John Smith, by Henry Jones, Attorney"; "For John Smith, Henry Jones, Agent." These all contain sufficient implication of authority to secure to the banker his statutory protection. But such forms as: "John Smith per Henry Jones," "John Smith by Henry Jones," "For John Smith, Henry Jones," are not explicit enough. These are good indorsements if the indorser is really an agent of the payee, but how is the paying banker to know whether this is so or not? He is, therefore, entitled before paying a cheque indorsed in this manner to have the authority for signing added to the indorsement, or to get a confirmation of the signature. And in practice this is what he would insist upon having.

A firm may sign as agent for another firm or for an individual, and, in exceptional cases, an agent may have power to sign his principal's name without indicating that he signs as an agent. Every agent must sign as he usually signs. Initials should not be accepted without confirmation.

It is not necessary on a *per pro.* indorsement that the indorser should state his official position, but if he does so, it must be a position fitting to be occupied by a person having power to sign on behalf of his principal. If the position as stated by the indorser is one not usually associated with such powers, the banker is entitled to ask for confirmation of the indorsement. This confirmation would, generally speaking, be necessary where, in a *per pro.* indorsement, the signer described himself as "Cashier" or "Ledger Clerk." An agent must act personally, and, as a general rule, has no power to delegate his authority. Indorsements, therefore, bearing evidence of delegated authority need confirmation.

In regard to agents' indorsements the difference in position between a collecting banker and a paying banker can be shortly stated thus: An indorsement by an agent for his principal may, though not necessarily, put the collecting banker on inquiry as to the authority of an agent, but not, as a general rule, the paying banker. S. 25, Bills of Exchange Act, 1882, provides that "a signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is only bound by such signature if the agent in so signing was acting within the actual limits of his authority." Since the agent's authority is here defined as "limited," and since the collecting banker is in a position easily to make inquiries whether the person so signing has the powers of an agent or not, the collecting banker who disregards such an indorsement may, when the circumstances are taken into consideration, find himself deprived

of his statutory protection under s. 82 on the ground of negligence. This ruling applies to all indorsements by agents, whether *per procurationem*, or in any other form.

68. *Indorsements of Firms and Joint Persons.*—The indorsements of firms must literally follow the description given on the face of the cheque. Thus a cheque payable to "Messrs. Smith & Co." should be indorsed "Smith & Co." not, *e.g.*, "J. Smith & Co.," because "J. Smith & Co." is presumably the title of another firm distinct from "Smith & Co." Drawers of cheques often carelessly write the names of firms in abbreviated form, as, *e.g.*, "Messrs. Smith." This form of address seems to suggest that the payee so named is a firm consisting of at least two persons named Smith, and should, therefore, be indorsed in one of the following ways: "Smiths," "Smith & Smith," "Smith & Son," "J. Smith & Sons," "J. & J. Smith," "J. Smith, S. Smith," "Smith Bros.," but not "Smith & Co.," because a firm of this name may include persons with names other than Smith. A cheque payable to "Smith Bros." should be so indorsed, but not, *e.g.*, "J. & S. Smith," or "J. Smith, S. Smith," because these indorsements do not show that J. Smith and S. Smith are brothers. A cheque payable to "Messrs. Smith & Jones" may be indorsed "Smith & Jones," or in two handwritings "John Smith, H. Jones." A cheque payable to "Smith, Jones & Co." may be indorsed "Smith, Jones & Co.," or "Smith, Jones & Co., H. Brown, Partner." The last indorsement would generally be accepted, because partners have implied authority to indorse by the name of the firm only, but if the word "Partner" is omitted, the indorsement would require confirmation, as the indorsement contains no indication that Brown has authority to sign.

Joint payees, when named individually, must indorse individually, unless one has authority to sign for and on behalf of the others. Thus a cheque payable to "J. Smith, Esq., H. Jones, Esq.," or "Messrs. J. Smith and H. Jones," should be indorsed by J. Smith and H. Jones separately. An indorsement in one handwriting, "J. Smith & H. Jones," would usually require confirmation, as there is nothing to show that the two are partners, or that one has authority to sign for the other. A cheque payable to "J. Smith & another" may be indorsed "For Self & another, J. Smith." The indorsements "J. Smith," or "J. Smith, H. Brown" (the other referred to), should not be accepted without confirmation. If a cheque is payable to two payees jointly, and one of them dies before presentment, the cheque is payable to the survivor on his indorse-

ment, provided that he can produce satisfactory evidence of the death of the other party.

69. *Indorsements of Joint Stock Companies.*—Section 30 of the Companies Act, 1929, provides that “a bill of exchange or promissory note shall be deemed to have been made, accepted, or endorsed on behalf of a company if made, accepted, or endorsed in the name of, or by or on behalf or on account of, the company by any person acting under its authority.” Accordingly, both (a) an indorsement in the name of the company, as, e.g., “John Smith & Co., Ltd.” and (b) one “on behalf of the company,” as, e.g., “*per pro.* John Smith & Co., Ltd., H. Jones, Secretary,” are good discharges, if put on by authority. But in practice (a) would not be accepted without confirmation, unless the banker were in a position to know that the indorsement was put on by a duly authorised official of the company. The following are variants of the second form of indorsement:—

(1) “*per pro.* John Smith & Co., Ltd., H. Jones.” The omission of “Secretary” does not make the indorsement invalid.

(2) “John Smith & Co., Ltd., H. Jones, Secretary.” This is legally correct and is generally passed, but insertion of *per pro.* is preferable.

(3) “John Smith & Co., Ltd., H. Jones.” This form is not accepted without confirmation, as there is nothing to show that Jones has power to sign.

(4) “H. Jones, Secretary, John Smith & Co., Ltd.” This form should not be accepted without confirmation; the form suggests the indorsement of an individual rather than that of the company.

The indorsement of a company must follow the description on the face of the cheque, even if the description is inaccurate. For example, an indorsement “John Smith & Co., Ltd.” would not be accepted if the firm was described as “J. Smith & Co., Ltd.” since the name of a joint stock company is fixed by its memorandum of association, and cannot be varied unless certain formalities are complied with. The proper course is for the indorser to follow the procedure indicated in s. 32 (4), Bills of Exchange Act, 1882, and indorse “J. Smith & Co., Ltd.” being the name of the company “as therein described,” adding underneath, if he chooses, the correct name of the company.

The officials who usually have authority to sign for limited companies are the directors, secretaries, and managers. An indorsement by a cashier would not, as a general rule, be accepted without verification. The officials, being agents of the company, are not,

generally, allowed to delegate their authority. The liquidator of a company can give a valid discharge, and it is usually accepted, but a banker is quite justified in asking for evidence of his appointment. An indorsement bearing evidence of delegation of authority by a liquidator should be verified before being accepted. If there is more than one liquidator all should join in the indorsement.

70. *Indorsements of Executors and Administrators.*—Executors may delegate their authority among themselves, but not outside themselves, and therefore a cheque made payable to the “Executors of the late John Smith” would be correctly indorsed “For Self & Co-executor[s] of the late John Smith, H. Jones,” but the indorsement, “H. Jones, Executor of the late John Smith,” would not be correct, for Jones should sign on behalf of himself and the other executor or executors. Every indorsement by an executor should contain an implication of his authority as executor. In the example quoted, the indorsement “*per pro.* the Executors of the late John Smith, H. Jones” would not be correct, as there is no evidence that Jones is signing as an executor, and executors have no implied power to delegate their authority. If “Executor” is added to his signature the indorsement would be in order. A cheque in favour of “John Smith,” who had died, would be correctly indorsed, “H. Jones, A. Brown, Executors of the late John Smith,” and would be paid by the banker, unless he had reason to doubt the *bona fides* of the signatories, in which case he would be quite justified in asking for some evidence of their appointment as executors. If the cheque were an open one, presented for payment over the counter, the banker, unless the executors were personally known to him, would probably require the probate to be shown to him before paying the cheque. If such a cheque were indorsed, *e.g.*, “Mary Smith, widow of John Smith,” it would not be accepted. The deceased’s executors, or, in the event of his dying intestate, *i.e.*, without having made a will, his administrators, are the only persons competent to deal with his property. All that has been said in this section applies to administrators as well as to executors.

71. *Indorsements of Trustees.*—Trustees must act personally and cannot delegate their authority, save in exceptional circumstances, even to one of themselves. If there is more than one, they must all join in the doing of any act connected with the trust. Accordingly, all must join in an indorsement, and a cheque drawn payable to the “Trustees of John Smith” would be correctly indorsed “H. Jones, A. Brown, Trustees of John Smith.” If a

cheque payable to "John Smith" is presented indorsed "For John Smith, H. Jones, Trustee," the banker, before paying it, would require some evidence that Jones had been appointed trustee to Smith's estate.

72. *Indorsement by a Mark.*—A payee unable to write may indorse by means of a mark. The mark should be followed or preceded by the name of the payee as described on the face of the cheque, together with the words "his mark." Such a form as "X John Smith," without the addition of "his mark," would be irregular. The mark should be attested by a witness. The witness should sign as a witness, and should give his address. Such forms as "X John Smith, his mark, in the presence of H. Jones, High St., Blanktown," are incorrect. Jones should sign his name and address under the word "Witness." In cases of doubt the banker is entitled to ask for confirmation. The paying cashier is not a desirable witness, neither is any bank official, if the illiterate payee is personally unknown to him.

73. *Special Indorsements.*—Such indorsements are defined by s. 34, Bills of Exchange Act, 1882 (see p. 45). A cheque originally drawn payable to bearer does not require an indorsement, and if there should be a special indorsement on it, the banker need not trouble to examine it, and there is no necessity for the special indorsee to indorse; if he does indorse, the banker need not concern himself with the indorsement. But the position is different with order cheques. If these are indorsed in blank they become payable to bearer, but if subsequently specially indorsed, they cannot be discharged unless they bear the indorsement of the special indorsee. An order cheque only becomes payable to bearer when the "only or last indorsement is an indorsement in blank" (s. 8 (3), Bills of Exchange Act, 1882). Hence the banker must examine all the indorsements on an order cheque. If after the blank indorsement a special indorsement follows, and the special indorsee fails to indorse, the cheque should be returned, marked "Requires third indorsement," or "Requires indorsement of J. Smith," the indorsee who has failed to indorse. Any holder may convert a blank indorsement into a special indorsement (*ibid.*, s. 34 (4)). He need not write his own signature, but simply indorse it to another person by writing that person's name above the blank indorsement. Cheques are usually specially indorsed in some such form as the following: "Pay to the order of H. Jones, J. Smith," Smith being the payee. But other less stereotyped forms are used. If these show an inten-

tion on the part of the payee to indorse the cheque specially, they should be treated by the banker as special indorsements. For example, "H. Jones or order, J. Smith"; "J. Smith to the order of H. Jones"; "Transferred to H. Jones, J. Smith"; "J. Smith in favour of H. Jones." In all these forms Jones's indorsement should be obtained. A special indorsement must not be altered without confirmation.

74. *Additions to Indorsements.*—Additions are sometimes made to indorsements making them restrictive (see s. 35, Bills of Exchange Act, 1882, p. 46). Thus J. Smith may indorse a cheque payable to him as follows: "To be placed to the credit of my a/c with the A. Bank, J. Smith"; "Pay to H. Jones's a/c, J. Smith," or "To the credit of H. Jones, J. Smith." These are not special indorsements, but memoranda addressed to the collecting banker. They do not concern the paying banker, and it is not his duty to see that the instructions are carried out. But additions to the signature, as, "Credit J. Smith," or "B. Bank a/c, J. Smith," are irregular and invalidate the indorsement as a good discharge, since they do not purport to be indorsements. The cheque should be returned, marked "Indorsement required." A cheque indorsed "Pay Cash, J. Smith," or "Received Cash, J. Smith," is quite in order, but the latter is a form of receipt, and must be stamped, if for £2 or over. J. Smith may also add to his indorsement, "*Sans recours*," or "Without recourse to me."

Additions are sometimes made to indorsements defining the terms on which the payee accepts the cheque. For example, the drawer may state on the face of the cheque that the amount to be paid is "in full settlement," and the payee may indorse such a cheque with the words "in part settlement," added to his signature. In such a case, what is the banker's position? Clearly, the memorandum on the face is addressed, not to the paying banker, but to the payee, and, as regards the addition to the indorsement, the paying banker may ignore it, either on the ground that it does not form part of the indorsement, or that s. 33, Bills of Exchange Act, 1882, states that "where a bill purports to be indorsed conditionally, the condition may be disregarded by the payer." But as the banker should always act in the best interests of his customer, to whom alone he is responsible, it is probable that the banker in most cases would feel justified in returning a cheque so indorsed. The same considerations apply if the payee strikes out a memorandum of this kind written on the face of the cheque, and in such circum-

stances also the paying banker would probably require the drawer's confirmation of the alteration before paying the cheque.

75. *Confirmation of Indorsements.*—An indorsement not quite in order is often confirmed by the collecting banker before presenting the cheque. The usual formula is "Indorsement confirmed," followed by the banker's signature. Order cheques not indorsed by the payee are sometimes presented marked "Placed to the credit of payee's a/c," followed by the banker's signature. Since this form cannot in any sense purport to be an indorsement of the cheque, the paying banker, if he pays the cheque, loses his statutory protection, and the drawer might refuse to allow his account to be debited with the cheque. Cheques so marked are, however, usually accepted out of courtesy to the presenting banker, who could not very well repudiate any liability that might be incurred through his indorsing of the cheque in this manner. It sometimes happens that a banker is authorised to indorse cheques for his customer. In such cases the usual formula is: "Indorsed on behalf of and by the authority of John Smith," followed by the banker's signature.

76. *Discharge of Dividend and Interest Warrants.*—It is a well-established custom for bankers to pay a dividend warrant payable to two or more persons on the indorsement of any one of them, and "the validity of any usage relating to dividend warrants, or the indorsements thereof," has been expressly confirmed (s. 97 (3), Bills of Exchange Act, 1882). It does not appear that this practice extends to interest warrants, so that these documents should be signed by all the proprietors. Dividend and interest warrants must bear the personal signatures of the proprietors of the stocks or shares, unless the company or corporation issuing the warrants has sanctioned the use of *per procuration* signatures. If the dividend warrant is to be signed on the face of the document no indorsement on the back is necessary. As a general rule, the paying banker should see that the instructions of the issuers of the warrants as to the kind of discharge required (e.g., signing in the particular place indicated) are observed, and should submit all irregularities to the issuers before payment of the warrants.

77. *Specimen Indorsements.*—The numbers given in the remarks column refer to the sub-headings of this chapter, and are given to facilitate reference should it be desired to know why a particular indorsement is considered correct or incorrect. The specimen indorsements are arranged in convenient groups, but analogous examples may be found under headings other than those directly in point.

## Of Individuals.

PAYEE.	HOW INDORSED.	REMARKS.
John Smith	John Smith John Smithe (Both in same writing)	Correct. 50. [Bills of Exchange Act, 1882, s. 32 (4)].
"	J. Smith	Correct. 57.
"	Smith	Incorrect. 57.
"	John E. Smith	Incorrect. 57.
"	Mr. John Smith	Incorrect. 64.
John Smith, Esq	John Smith, Esq.	Incorrect. 64.
Smith	J. Smith	Correct. 57.
J. Smith	p.p. Trading Co., Ltd., J. Smith, Secretary	Incorrect. 66.
Mr. J. Smith	J. Smith, Junior	Incorrect. ( <i>Prima facie</i> J. Smith is J. Smith, Senior.)
Mr. J. Smith, Senior	J. Smith	Correct. (See above.)
Mr. J. Smith, Junior	J. Smith	Incorrect. (See above.)
"	J. Smith, Junior	Correct.
Anne Smith	Ann Smith	Incorrect. 57.
J. Me. Intosh	J. MacIntosh	Incorrect. 57.
Dr. J. Smith	Dr. J. Smith	Incorrect. 64.
"	J. Smith, M.D.	Correct. 64.
"	J. Smith	Correct. 64.
Major J. Smith	Major J. Smith	Incorrect. 64.
"	J. Smith, Major	Correct. 64.
"	J. Smith	Correct. 64.
Sister Mary	Sister Mary	This is considered to be in order.

## INDORSEMENTS

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## Of Agents.

PAYEE.	HOW INDORSED.	REMARKS.
J. Smith	per pro. J. Smith, Henry Jones	Correct. 67.
„	per pro. Mr. J. Smith Henry Jones	Correct. 67.
„	Henry Jones per pro. J. Smith	Correct. 67.
„	J. Smith per pro. Henry Jones	Incorrect. 67.
„	p.p. J. Smith H. Jones & Sons	Correct. 67.
„	p.p. J. Smith H. J.	Incorrect. 67.
„	For J. Smith Henry Jones	Incorrect. 67.
„	For J. Smith Henry Jones, Agent	Correct. 67.
„	pro J. Smith Henry Jones	Incorrect. 67.
„	J. Smith pro Henry Jones	Incorrect. 67.
„	J. Smith per Henry Jones	Incorrect. 67.
„	J. Smith per Henry Jones, Agent	Correct. 67.
„	Henry Jones Agent to J. Smith	Incorrect. 67.
„	J. Smith by Henry Jones, (His) Attorney	Correct. 67.
J. Smith for H. Brown	per pro. J. Smith Henry Jones	Incorrect. 58.
„	J. Smith for H. Brown	Correct. 58.

## ELEMENTARY BANKING

Of Agents (*continued*).

PAYEE.	HOW INDORSED.	REMARKS.
J. Smith A/C H. Brown	J. Smith	Incorrect. 58.
Mr. J. Smith per Mr. H. Brown	Mr. J. Smith per H. Brown	Correct. 58.
"	J. Smith	Incorrect. 58.
Anglian Company	p.p. J. Smith, Agent for the Anglian Company, Henry Jones	Incorrect. 67.
Virginia Estate per J. Smith	J. Smith	Incorrect. 58.

## Of Firms and Joint Persons.

PAYEE.	HOW INDORSED.	REMARKS.
Messrs. Smith Jones & Co.	Smith Jones & Co.	Correct. 68.
"	Smith Jones & Co., H. Brown, Partner	Generally accepted. 68.
"	Smith Jones & Co. H. Brown (All in same writing)	Incorrect. 68.
Smith & Co.	John Smith & Co.	Incorrect. 68.
John Smith and Co.	Smith & Co.	Incorrect. 68.
Smith Bros.	J. Smith & Bros.	Incorrect. 68.
"	J. and S. Smith	Incorrect. 68.
"	J. Smith S. Smith	Incorrect. 68.
"	Smith Bros.	Correct. 68.
Messrs. Smith	Smith & Co.	Incorrect. 68.
"	J. and S. Smith	Correct. 68.
"	J. Smith & Sons	Correct. 68.
"	Smith Bros.	Correct. 68.

Of Firms and Joint Persons (*continued*).

PAYEE.	HOW INDORSED.	REMARKS.
Messrs. Smith	Smiths	Correct. 68.
"	Sinith and Smith	Correct. 68.
"	J. Smith	
"	S. Smith	Correct. 68.
"	Smith	Incorrect. 68.
"	For Self and S. Smith J. Smith	Incorrect. 68.
Messrs. Smiths	Smith and Co.	Incorrect. 68.
"	Smiths	Correct. 68.
"	Messrs. Smiths	Incorrect. 68.
"	p p. Messrs. Smiths H. Brown	Correct. 68.
Messrs. P. J. Smith	P. J. and P. J. Smith	Correct. 68 and 57.
"	P. J. Smith	Incorrect. 68 and 57.
Misses Smith	Smith Sisters	Correct. 68.
Messrs. Smith and Jones	John Smith	Correct. 68.
"	A. B. Jones	
	Smith and Jones	Correct. 68.
Messrs. J. Smith and A. B. Jones	J. Smith and } In same A. B. Jones } handwriting	Requires Confirmation. 68.
"	Smith and Jones	Incorrect. 68.
"	J. Smith	Correct. 68.
	A. B. Jones	
Macdonald & Smith	Macdonald & Smith	Correct.
MacDonald & Smith	Macdonald & Smith	Incorrect. 57.
Mr. J. and Mrs. M. Smith	J. and M. Smith (In same handwriting)	Incorrect. 68.
J. Smith and others	J. Smith	Incorrect, except on a dividend warrant. 68.
"	For self and others	
	J. Smith	Correct. 68.
J. Smith or H. Brown	H. Brown	Correct (See Chapter III, Payee.)

## ELEMENTARY BANKING

## Of Joint Stock Companies.

PAYEE.	HOW INDORSED.	REMARKS.
Trading Co., Ltd.	per pro. Trading Co., Ltd., J. Smith, Secretary	Correct. 69.
"	per pro. Trading Co., Ltd., J. Smith	Correct. 69.
"	pro Trading Co., Ltd., J. Smith, Director	Correct. 69.
"	Trading Co., Ltd., per J. Smith, Secretary	Correct. 69.
"	For Trading Co., Ltd., J. Smith, Manager	Correct. 69.
"	For Trading Co., Ltd., J. Smith	Incorrect. 69.
"	Trading Co., Ltd., J. Smith, Director	Correct. 69.
"	For Trading Co., Ltd., H. Jones, pro Secretary	Incorrect. 69.
"	For Trading Co., Ltd., T. Brown, Cashier	Not usually accepted without verifica- tion. 69.
"	p.p. Trading Co., Ltd., Brown, Smith & Co.	Correct. 69.
"	Trading Co., Ltd.	Should be confirmed. 69.
"	p.p. Trading Co., J. Smith, Secretary	Incorrect. 69.
"	For Trading Co., Ltd. For Universal Trading Co., Ltd., J. Smith, Secretary	Correct. 69.

Of Joint Stock Companies (*continued*).

PAYEE.	HOW INDORSED.	REMARKS.
Trading Co., Ltd	Trading Co., Ltd. For Universal Trading Co., Ltd., J. Smith, Secretary	Generally accepted, but the more correct method is for the "for" or "per pro." to be placed against both names (as above).
"	J. Smith, Secretary, Trading Co., Ltd.,	Incorrect. 69.
"	For Trading Co., Ltd., In Liquidation J. Smith } Liqui- H. Brown } dators	Correct. 69.
"	For Trading Co., Ltd. In Liquidation For J. Smith } Liqui- H. Brown } dators T. Jones	Incorrect. 69.
Trading Co., Ltd., per J. Smith	J. Smith	Incorrect. 66.
J. Smith Secretary, Trading Co., Ltd.	J. Smith, Secretary, Trading Co., Ltd.	Correct. 66.
J. Smith Liquidator of the Trading Co., Ltd.	J. Smith	Incorrect. 66.
Trading Co.	Per pro. Trading Co., Ltd., J. Smith, Secretary	Incorrect. 57.
Trading Co., J. Jones & Co., Agents	per pro. Trading Co., J. Jones & Co., Agents	Correct. 67.
"	Trading Co., per pro. J. Jones & Co., Agents J. Smith	Incorrect. 67.

## ELEMENTARY BANKING

## Of Executors and Administrators.

PAYEE.	HOW INDORSED.	REMARKS.
J. Smith (now deceased)	H. Brown F. Smith Executors of the late J. Smith	Correct. 70.
"	For Self and Co-Executor of the late J. Smith H. Brown	Correct. 70.
"	For Self and Co-Administrator of the late J. Smith H. Brown	Correct. 70.
"	Mary Smith, Widow of J. Smith	Incorrect. 70.
H. Brown and T. Smith Executors of the late J. Smith	For Self and Co-Executor of the late J. Smith H. Brown	Correct. 70.
H. Brown and another Executors of the late J. Smith	For Self and Co-Executor of the late J. Smith Thos. Smith	Correct. 70.
Executors of the late J. Smith	For Self and Co-Executors H. Brown	Incorrect. 70.
"	H. Brown Executor of late J. Smith	Incorrect. 70.
"	per pro. Executors of the late J. Smith H. Brown	Incorrect. 70.
Representatives of the late J. Smith	For Self and Co-Executors of the late J. Smith H. Brown	Correct. 70
J. Smith, Executor (or Trustee)	J. Smith	Incorrect. 66.

## Of Trustees.

PAYEE.	HOW INDORSED.	REMARKS.
The trustees of the late J. Smith	For Self and Co-Trustees of the late J. Smith H. Brown	Incorrect. 71.
"	H. Brown } Trustees of J. Jones } the late J. Smith	Correct. 71.
J. Smith	For J. Smith H. Brown, Trustee	Incorrect. 71.
Trustee of J. Smith	per pro. Trustee of J. Smith, J. Jones	Incorrect. 71
H. Brown and J. Jones, Trustees of J. Smith	H. Brown J. Jones	Incorrect. 66
"	H. Brown } Trustees of J. Jones } J. Smith	Correct. 66

## Of Married Women.

PAYEE.	HOW INDORSED.	REMARKS.
Mrs. Smith	A. Smith	Correct. 65
"	(Mrs.) A. Smith	Correct. 65.
"	Mrs. A. Smith	Incorrect. 65.
Mrs. John Smith	M. A. Smith	Incorrect. 65.
"	Mrs. John Smith	Incorrect. 65.
"	M. A. Smith Wife (or widow) of John Smith	Correct. 65.
"	M. A. Smith (Mrs. John Smith)	Correct. 65.
"	John Smith	Incorrect. 65.
Mrs. J. Smith	Emma Smith Mrs. J. Smith	Correct. 65.
Miss Ann Smith (now married)	Ann Jones <i>née</i> Smith	Correct. 65.

## ELEMENTARY BANKING

## Of Official Payees.

PAYEE.	HOW INDORSED.	REMARKS.
J. Smith, Treasurer Blanktown Urban District Council	J. Smith	Incorrect. 66
Blanktown U.D.C.	For Blanktown U.D.C., J. Smith, Treasurer	Correct. 66.
"	For (or p.p.) Blanktown U.D.C., H. Brown, Rate Collector	Not usually accepted with- out confirmation. 67.
Overseers of Blanktown	J. Smith H. Brown	Incorrect. 66.
"	J. Smith } Overseers of H. Brown } Blanktown	Correct. 66.
"	For the Overseers of Blanktown John Jones, Assistant Overseer	Generally accepted. 67.
Mayor of Blanktown	J. Smith Mayor of Blanktown	Correct. 66.
"	per pro. Mayor of Blanktown H. Brown	Correct. 67.
Managers of Blanktown Schools	For the Managers of Blanktown Schools J. Smith, Chairman	Correct. 67.
"	J. Smith } Managers of H. Brown } Blanktown Schools	Correct. 66.
Blanktown Vestry	J. Smith, Clerk to the Blanktown Vestry	Incorrect. 67.
"	p.p. Blanktown Vestry J. Smith, Clerk	Correct. 67.
Collector of Customs and Excise	per pro. J. Smith Collector of Customs and Excise H. Brown	Incorrect. 59 and 67.

Of Official Payees (*continued*).

PAYEE.	HOW INDORSED.	REMARKS.
Official Receiver of J. Smith & Co.	H. Brown, Official Receiver of J. Smith & Co.	Correct. 66.
"	per pro. H. Brown, Official Receiver of J. Smith & Co. J. Jones	Incorrect. 67.

## By a Mark.

PAYEE.	HOW INDORSED.	REMARKS.
John Smith	John Smith X	Incorrect. 72.
"	His John X Smith Mark	Incorrect. 72.
	In the presence of H. Brown	
"	His John X Smith Mark Witness H. Brown, 15, Slade Rd., Bristol	Correct. 72.

## Miscellaneous.

PAYEE.	HOW INDORSED.	REMARKS.
J. Smith or Bearer	pay H. Brown, J. Smith	Correct. 73.
J. Smith or Order	J. Smith pay H. Brown or order J. Jones	Incorrect. Requires indorsement of H. Brown. 73.

## ELEMENTARY BANKING

Miscellaneous (*continued*).

PAYEE.	HOW INDORSED.	REMARKS.
J. Smith or Order	J. Smith pay <u>H. Brown</u> <u>J. Jones</u> W. Adams	Should be returned for confirmation. 73.
J. Smith only	J. Smith	Requires confirmation. 58.
J. Smith or order of H. Brown	J. Smith	Correct. May be duly discharged by either.
Bearer or Order	No indorsement	Correct. (See Paying Bearer Cheques, Chapter V.)
Bearer (J. Smith) or Order	No indorsement	Incorrect. 58.
Bearer, my wife	No indorsement	It would be desirable to obtain the wife's indorsement. 58.
J. Smith or Bearer	No indorsement	Requires indorsement, being equivalent to an order cheque.
J. Smith or Order H. B.	No indorsement	Generally considered a bearer cheque, but see Chapter V, Paying Order Cheques.
J. Smith or .....	No indorsement	Incorrect. Requires indorsement. (See Chapter V, Paying Order Cheques.)
..... or Order	No indorsement	Should be returned as it does not specify a payee. (See Chapter III, Payee.)
Self or Order (drawn by J. Smith)	No indorsement	Legally correct if presented by payee (J. Smith). 60.
"	p.p. J. Smith H. Brown	Would not generally be accepted without confirmation. 61.

## Impersonal and Anomalous Payees.

PAYEE.	HOW INDORSED.	REMARKS.
Wages or order	No indorsement	Incorrect. 59.
Cash or order	No indorsement	Incorrect. 59.
Income Tax or order	No indorsement	Incorrect. Generally paid on the indorsement of the Collector of Inland Revenue for the district. 59.
Borough Rates or order	No indorsement	Incorrect. The usual practice is to obtain the discharge of the Borough Treasurer. 59.
S.S. Marguerite or order	No indorsement	Incorrect. Should be indorsed by a responsible party on behalf of the steamship. 59.
Robinson Crusoe or order	No indorsement	Correct. May be treated as a bearer cheque. 59.
Wages or bearer	No indorsement	Correct.
% Smith or order	No indorsement	Incorrect. Should be indorsed "Placed to the credit of payee's account," followed by the signature of Smith's bankers. 58 and 75.
J. Smith	To my account J. Smith	Correct. Banker's indorsement not required. 74.
"	Pay to H. Brown's account J. Smith	Correct. Second indorsement not required. 74.
J. Smith in full settlement	J. Smith in part payment	Advisable to return. 74.
J. Smith	Received cash J. Smith	Correct. But requires a receipt stamp if for £2 or over. 74.
"	J. Smith Without recourse	Correct. 74.
Macmahon's Family Journal	Macmahon's Family Journal	Incorrect. 59.

## ELEMENTARY BANKING

Impersonal and Anomalous Payees (*continued*).

PAYEE.	HOW INDORSED.	REMARKS.
Macmahon's Family Journal	Macmahon's Family Journal Charles Macmahon Proprietor	Correct. 59
„	Macmahon's Family Journal James and Smith Wholesale Agents [or Publishers]	Correct. 67.

## Of Dividend Warrants.

PAYEE.	HOW INDORSED.	REMARKS.
John Smith and H. Brown	H. Brown	Correct. 76.
John Smith or Bearer	No indorsement	Incorrect. Payee's dis- charge is necessary
Proprietor's Signature	Proprietor's Signature	and should be ob- tained in the space indicated. 76.
.....	.....	
John Smith or Order		Correct. No further dis- charge is necessary.
Proprietor's Signature	Proprietor's Signature	76.
.....	..... John Smith	
John Smith and another	John Smith	Correct. 76.
„	H. Brown (the other referred to)	Incorrect. 76.
John Smith	per pro. John Smith H. Brown	Incorrect. 76.

## Of Interest Warrants.

PAYEE.	HOW INDORSED.	REMARKS.
John Smith and H. Brown	John Smith	Probably incorrect. 76.

## CHAPTER V

### PAYMENT OF CHEQUES

**78. Paying Banker.**—The paying banker is the banker to whom the order to pay, where the order takes the form of a cheque, is addressed. It is the duty of the banker to honour his customers' cheques provided :

- (a) That the balance standing to the credit of his customer is sufficient to pay them.
- (b) That the cheques are drawn in proper form.
- (c) That there is no legal bar prohibiting payment.

This duty to honour his customers' cheques is one of the implied terms of the contract entered into by the banker and his customer when the account is opened.

The conditions which must be fulfilled before a banker is justified in honouring his customers' cheques are given below, in detail :

- (a) *Sufficiency of Funds.*—This does not call for any elaboration.
- (b) *Proper Form.*—The cheque as drawn must :
  - (1) Be signed by the drawer himself, or by his authority, and must be duly stamped.
  - (2) Be due for payment, *i.e.* not stale or post-dated.
  - (3) Have the sum to be paid expressed in words, or in words and figures, which should agree.
  - (4) Purport to be properly indorsed, if an order cheque.
  - (5) Bear the drawer's confirmation of any alteration.

(c) *No Legal Bar.*—The following causes are sufficient to justify a banker in not paying a cheque :

- (1) Notice from the customer to stop payment.
- (2) Knowledge of any defect in the title of the person presenting the cheque.
- (3) Notice of an available act of bankruptcy by the customer, or of his death, or insanity, or, in the case of a limited company, notice of the winding up.
- (4) Notice of an assignment by his customer of the available credit balance.
- (5) Knowledge that the customer contemplates a breach of

trust in cases where it is known that funds credited to the account are trust funds.

(6) Notice of a garnishee, injunction, or other order restraining his customer from operating on the account.

The points given above are those which a paying cashier must bear in mind before paying a cheque. The list seems formidable, but, in practice, a cashier can settle all the points given in (b) at a glance. In regard to (c), a cashier is provided with a list of "stopped" cheques, while knowledge of a defect in the presenter's title is a question of fact. The remaining cases do not often arise, and a cashier easily memorises the customers to which they relate.

79. *Countermand of Payment*.—By s. 75 (1) Bills of Exchange Act, 1882, the duty and authority of a banker to pay a cheque drawn on him are determined by effective countermand of payment. This right of stopping payment exists up to the moment when the banker is about to pay or to bind himself to pay the cheque. In the case of a cheque, where the banker has until the close of business hours to pay or return it, the drawer's right to countermand payment exists up to the close of business, even though the cheque may, in the meantime, have been cancelled by the banker, and debited to the drawer's account. But if the paying banker has telegraphed to the collecting banker stating that the cheque has been paid, or if the cheque has been paid in by another customer and duly passed to his credit, the payment is irrevocable, and the drawer cannot stop payment of the cheque.

To be effective, the notice of countermand of payment must reach the banker either by word of mouth or in writing. The banker should make it a rule to get the drawer's written authority to stop a cheque. The authority should contain a full description of the cheque. Immediately on receiving notice the banker should attach full particulars of the stop to the customer's ledger account, and add the notice to the general list of such orders. Notice of the stop should also be sent, when necessary, to each branch or bank where a standing order to cash the customer's cheques exists. If the drawer sends notice of a stop which is duly received, then the banker will have to bear any loss that may ensue should he pay the stopped cheque. The best answer is: "Orders not to pay."

If the customer wires to his banker to stop payment of a cheque, the banker should at once communicate with his customer, requesting confirmation. If the cheque is presented before such confirmation is received, the banker should postpone payment, taking

care not to say or do anything that could be construed as damage to his customer's credit. A stop by telephone would justify the same cautious attitude, unless the banker were satisfied that the telephone message was actually delivered by the customer himself, or by someone acting with his authority. A suitable answer in such circumstances would be "Payment countermanded by telegram—payment postponed pending confirmation, present again."

Countermand of payment can only be effectively made by the drawer, so that when a banker is advised by a holder that he has lost a cheque, he should request the holder at once to communicate with the drawer, and obtain the latter's written instructions. Should the cheque be presented in the meantime, the banker should make careful inquiries into the title of the presenter before paying the cheque, or, alternatively, he may postpone payment as in the case of a stop by telegram. If the cheque requires an indorsement before payment, and the holder, having lost it, informs the banker that he has not indorsed it, and that, therefore, any indorsement purporting to be his must be a forgery, the banker, if he pays the cheque to a party other than the alleged holder, might not be entitled to debit his customer's account with it, on the ground that the cheque had not been paid in good faith and in the ordinary course of business. Any one of several partners, trustees, executors, or joint account holders, may countermand the payment of a cheque drawn by any or all of them.

80. *Customer's Balance*.—The banker, before taking such a serious step as dishonouring a cheque for lack of funds, must make quite certain that the state of the account justifies him in so doing. Substantial damages would usually be awarded against a banker who had improperly dishonoured a cheque and thereby injured the credit of a business man. In the case of a non-trading customer, only nominal damages would probably be awarded, unless special damage were proved.

When computing the customer's balance available for drawing against, the banker need not take cognisance of any *credit* balance the customer may have at some other branch of the same bank, and would not be liable if he dishonoured a cheque for the reason that there were not sufficient funds to pay the cheque at the branch on which it was drawn. But if the customer has a *debit* balance at another branch, the banker, unless there is an agreement, express or implied, to the contrary, may combine the two accounts, and dishonour a cheque drawn on the branch with the *credit* balance,

should the combined accounts show a debit balance or an insufficient credit balance. As, however, his right depends on there being no *implied* agreement or course of business to keep the accounts separate, it is desirable to give notice to the customer before combining the accounts and dishonouring cheques, or, better still, to take a definite agreement permitting combining without notice. And if a customer has an account with a banker at one branch, and usually pays his credits into another branch, the banker is not bound, before dishonouring a cheque, to take cognisance of any credits which may have been paid in at the other branch, but not actually received by him. The banker is not bound to take into account money placed on deposit by a customer when deciding whether or not to honour a cheque drawn on the current account, but naturally would usually do so.

In computing the balance available for drawing against, the banker is justified in setting aside sufficient money to meet any cheques marked "good" for the amount at the customer's request, or for clearing purposes, but he is not justified in reserving money to meet bank charges accruing, but not actually debited, or (unless the customer is bankrupt) to meet a possible liability on bills discounted by him for the customer and not yet matured.

If the customer directs that certain moneys being or to be paid in are to be allocated to meet a particular cheque, the banker must obey his customer's instructions, irrespective of the state of the account between him and his customer. If the customer's balance is not sufficient to meet a cheque, the banker may nevertheless elect to pay the cheque, and can debit his customer with the amount. The drawing of a cheque when the funds are insufficient to meet it is equivalent to asking the banker for an overdraft.

If the banker has followed the usual practice of crediting cheques as cash before clearance, he can, nevertheless, return cheques drawn against such uncleared credits, marked "Effects not cleared," unless there is an agreement, express or implied, permitting the customer to draw against such items. (*Cf. Underwood v. Barclays Bank, Ltd.*, 1924.) Some banks have a notice printed in their pass books or on their credit slips that the right not to honour cheques drawn against uncleared items to credit is reserved. In the case of a weak customer the safer course is to put the matter beyond dispute by advising him that cheques must not be drawn against until cleared. If the banker has agreed to allow his customer an overdraft, with or without security, he cannot, without due notice to his customer, refuse cheques

within the limit of the overdraft, and issued prior to receipt of his notice.

81. *Cheque not an Assignment of Funds.*—By s. 53, Bills of Exchange Act, 1882, a cheque does not, except in Scotland, operate as an assignment of the drawer's funds in favour of the payee. This means that the credit balance cannot be earmarked for the holder of any particular cheque. If, therefore, a cheque is presented and dishonoured because of insufficient funds, the banker must not, on that account, refuse a subsequent cheque which is within the available balance. And he must not pay part of a cheque when the balance available is not sufficient to meet the whole, since a cheque does not operate as an assignment. The holder of a cheque has no equitable claim against the drawee-banker, there being no privity of contract, *i.e.* mutual relationship, between the two parties. The recognition of this principle is very important, as it enables the banker, in the general way, to ignore the claims of third parties, and to consider solely the best interests of his customer, to whom alone he is responsible.

82. *Payment in Due Course.*—A cheque is discharged by payment to the holder, in good faith, in the ordinary course of business, and without notice that his title to the cheque is defective. Such a payment is a payment in due course (ss. 59, 60, Bills of Exchange Act, 1882), and will justify the banker in charging his customer with the amount. The holder to whom payment is made may be the payee, an indorsee, or the bearer, according to the nature of the instrument, or the way in which it has been indorsed. It is not "in the ordinary course of business" for a banker to pay a cheque out of office hours, except where the cheque is presented through a Clearing House or Local Exchange, in accordance with the rules of the Clearing House, or the customs of the Exchange. Otherwise, if he does so pay it, he loses his statutory protection, and moreover has to face the possibility that the drawer may stop payment of the cheque before the bank opens on the next business day.

A banker is bound to cash open, *i.e.* uncrossed cheques, over the counter, but he is under no obligation to send notes or cash in payment by post. Cheques presented for payment in this way by persons unknown to the banker should therefore be returned for presentation in the usual way. The position would naturally be different if the customer himself sent a cheque by post asking for cash to be remitted to him. The particular duties attaching to order

cheques and crossed cheques which a banker must carry out in order to be able to charge his customer are dealt with later.

In ordinary circumstances, a cheque drawn in proper form and complete in every particular must be paid or refused payment as soon as it is presented. But if the circumstances connected with its presentation are such as to raise reasonable suspicions in the banker's mind, he is entitled to use discretion in the matter of immediate payment.

It seems reasonable to suppose that the banker would also be entitled to postpone payment if the cheque were drawn in an unusual manner, or bore upon its face peculiarities that would raise doubts in an ordinary person's mind as to the genuineness of the order. So also if a cheque were stopped by an unconfirmed telegram, or if a person professing to be the payee were to state that he had lost the cheque, it would appear that the banker could reasonably make inquiries about such matters before paying the cheque.

The holder is entitled to be paid in legal tender. Legal tender is a tender of money of such kind as is laid down by law, and which a person entitled to receive it is bound to accept in discharge of a debt expressed to be payable in coin of the realm. The tender must be exact in amount and unconditional; the creditor is not bound to give change. The refusal of legal tender by a creditor does not cancel the debt, but it is a good defence to an action, and renders the creditor liable to pay the debtor's costs. Gold coins of full legal weight \*—except pre-Victorian coins—are legal tender for any amount. All the notes issued by the Bank of England are legal tender in England and Wales for any amount. Silver and bronze coins are legal tender for amounts not exceeding forty shillings and one shilling respectively.

By the Coinage Offences Act, 1861, s. 17, no tender made in gold, silver, or copper coin, defaced by being stamped with any name, whether such coin is or is not thereby diminished or lightened, is allowed to be a legal tender. S. 26 of the same Act makes it lawful for any person to cut, break, bend, or deface a base or counterfeit coin, the loss falling upon the person tendering the coin. A banker should, therefore, deface all such coins tendered to him.

Bank-notes of £1 and 10s. are also legal tender in Scotland and

\* A new sovereign weighs 123.27447 grains, and continues legal tender until reduced by wear to 122.5 grains. A half-sovereign weighs 61.63723 grains, and remains legal tender until reduced to 61.125 grains. English gold is eleven-twelfths fine, i.e. of pure gold, and one-twelfth alloy.

Northern Ireland. They are likewise legal tender by the Bank of England itself, including the payment of its larger notes. It should be noted that although bankers, when paying cheques, usually ask the presenter in what form he would like to be paid, this custom is merely a matter of courtesy, and is not obligatory upon them. All that the law requires is that they should pay in legal tender.

Very few, comparatively speaking, of the cheques issued are presented at the bank counter, and cash demanded for them. Most of them are paid, directly or indirectly, through the Clearing Houses in London and certain provincial towns, and through the local clearings.

When charging interest the banker should reckon it from the dates of payment by him (or his agent if cashed under standing orders) of the cheques, not from the dates upon which the cheques were drawn.

83. *Paying Bearer Cheques.*—S. 2, Bills of Exchange Act, 1882, defines "bearer" as the person in possession of a cheque which is payable to bearer; and by s. 8 (3) a cheque is payable to bearer which is expressed to be so payable, or on which the only or last indorsement is an indorsement in blank; and by s. 7 (3) a cheque made payable to a fictitious or non-existing person may be treated as payable to bearer. A cheque originally drawn payable to bearer need not be indorsed, and the banker cannot demand an indorsement before paying the cheque on presentation. If any indorsements do appear on the back of the cheque, the banker may ignore them. Any holder may alter a bearer cheque to an order cheque by striking out the word "Bearer." He may, or may not, as he chooses, also write the word "Order" for "Bearer." Any such alteration need not be initialled, and the banker must then regard the instrument as an order cheque requiring indorsement.

If a cheque is drawn payable to "Bearer — or Order," the written word "Bearer" would be considered to override the printed words "or Order," and the cheque should be treated as payable to bearer. If, as in some forms of cheques, the space after the printed word "or" is left blank, and the drawer had made the cheque payable to bearer, and had also written in the word "Order" after "or," possibly the banker, if the cheque were presented without being indorsed, would be justified in returning it as an embarrassing document. By paying "in due course" an uncrossed cheque payable to bearer to anyone tendering it over the counter, the banker obeys the mandate of his customer, and accordingly can debit him with

the cheque, and this is so even if the bearer had no property in the cheque, or was himself the thief who had stolen it.

84. *Paying Order Cheques*.—Cheques are usually drawn payable either to bearer or order. If either of these words is omitted the cheque is payable to order, unless there are “words prohibiting transfer or indicating an intention that it should not be transferable” (Bills of Exchange Act, 1882, s. 8 (4)). “Where a bill [which includes a cheque], either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option” (*ibid.*, s. 8 (5)). Therefore, when a cheque is drawn “Pay J. Jones or -----,” it must be indorsed by J. Jones, who may also indorse it to another person. If, however, the mandate of the drawer is “Pay J. Jones only,” then the banker must pay J. Jones and no other person, *i.e.* the cheque is not transferable. Payment over the counter of such a cheque should only be made after identification of the payee, and payment through a bank only after the confirmation of the collecting banker. If the cheque is drawn payable to “J. Jones or Bearer,” it must bear J. Jones’s indorsement, as it is in effect an order cheque.

The striking out of the word “Order,” and initialing the alteration, would apparently make a cheque so altered payable to bearer. But some banks prefer to return cheques so drawn, marking them “Alteration requires completion,” or would treat the cheques as order cheques requiring indorsement.

If a banker pays an order cheque bearing a forged indorsement, he is protected by s. 60 Bills of Exchange Act, 1882. This section runs as follows: “When a bill payable to order on demand is drawn on a banker, and the banker on whom it is drawn pays the bill in good faith and in the ordinary course of his business, it is not incumbent on the banker to show that the indorsement of the payee or any subsequent indorsement was made by or under the authority of the person whose indorsement it purports to be, and the banker is deemed to have paid the bill in due course, although such indorsement has been forged or made without authority.”

The word “bill” in this section is limited to a cheque, defined by s. 73 as “a bill of exchange drawn on a banker payable on demand.” But drafts and other orders to pay which do not come within this definition of a cheque are not protected by s. 60. Moreover, the banker, to gain protection, must not only see that the cheque is a cheque in the defined sense of the word, but (a) he must

pay it in good faith and in the ordinary course of his business, and (b) the cheque must *purport* to be indorsed by or under the authority of the proper indorser. In regard to (a) "a thing is deemed to be done in good faith, within the meaning of this Act, where it is in fact done honestly, whether it is done negligently or not" (Bills of Exchange Act, 1882, s. 90). But negligence or carelessness, when considered in connection with the surrounding circumstances, may be evidence of bad faith. Such negligence or carelessness, however, must be of such a gross character as to amount, in effect, to fraud. The surrounding circumstances are of the greatest importance, and each case must be judged on its merits. Paying a cheque out of the usual office hours would not be "in the ordinary course of business." In regard to (b), see pp. 44-74, where indorsements that fulfil the necessary requirements are fully dealt with. Payment made by crediting the cheque to the account of another customer is a good payment and is protected by s. 60.

Under s. 24, a forged indorsement on a bill or cheque is wholly inoperative, and no person claiming through the forged indorsement has any right to sue on, or to retain the instrument, or to give a valid discharge therefor. Accordingly, if a banker pays a cheque with a forged indorsement in such a way as to forfeit his protection under s. 60, he will be unable to debit his customer by reason of having paid contrary to instructions and to a person unable to give a valid discharge. And, furthermore, as such a cheque would be wrongfully converted, *i.e.* the true and rightful owner is deprived of its possession, the true owner could bring an action of trover against the banker, *i.e.* an action to recover the value of the document of which he has been wrongfully deprived.

85. *Paying Crossed Cheques*.—The sections of the Bills of Exchange Act, 1882, which define a crossing, and the duties and liabilities of the paying banker in respect of crossed cheques, are given on pp. 91-95, together with a full explanation.

86. *Paying Cheque with Bill or Document Attached*.—When a cheque is drawn payable to "Bill attached or bearer," the banker should, in the interests of his customer, see that the bill is actually attached before paying the cheque, though whether he is legally bound to do so is open to question. If the bill is not attached, the cheque should be returned marked "Re-present with bill attached." Unless particulars of the bill are written on the cheque the banker has no means of knowing whether the bill is in order or not. If the cheque is drawn payable to "Documents attached,"

without defining them, the banker can do no more than see that there is more than one document attached. Where a cheque is presented with a document or documents attached, but makes no reference to the attached documents, the banker need not examine the documents to see if they are in order. In these, and in similar cases, the banker should act in a manner most conducive to his customer's interests.

**87. Advising Fate by Telegram.**—The collecting banker sometimes telegraphs to the paying banker asking if a particular cheque will be paid. Even though the paying banker's customer has sufficient funds to his credit to justify the cheque being paid, the banker's answer should be so worded as not to commit him to the payment of the cheque in any event. "Would be paid if presented now and in order," is a suitable wording. If the paying banker replies "Yes, if in order," he is bound to honour the cheque on presentation, if complete and regular on the face of it, though in the meantime the drawer may have died, become insane or bankrupt, or stopped payment of the cheque, or had a garnishee order served attaching his balance. Since advice of fate in this manner before presentation is not a legal payment, the banker cannot debit the drawer's account in any of these circumstances, and may, therefore, find himself without means of recovering his money. And, for the same reason, he is not entitled to retain, pending actual presentation, sufficient of the drawer's balance to meet the wired cheque. If he did so, and other cheques were dishonoured through such retention, he would be liable to his customer in damages.

Similarly, when a dishonoured cheque is recalled by wire, the answer should be "Cheque ten pounds Smith would be paid if re-presented now and in order." This answer would justify the banker in refusing payment if any event occurs in the meantime preventing any operations on the customer's account. Of course, where the telegram is sent with the customer's consent or on his instructions, the position is quite different, and the banker is entitled to retain an amount sufficient to meet the wired cheque. Cheques are sometimes presented direct with a request to wire fate. When once the telegram has been sent, the customer cannot stop the cheque, and the banker can debit it to his account in any circumstances.

**88. Marking Cheques.**—Cheques are sometimes "marked" as good for payment at the request of the drawer, or as between banker and banker. This is done by the banker stamping the name of

his bank on the face of the cheque and adding his name or initials. When the drawer requests his banker to mark a cheque, the banker is entitled to retain money to meet the cheque, and therefore to dishonour any other cheques where the balance remaining after providing for the marked cheque is insufficient to cover them.

It is not customary in this country for bankers to mark cheques at the request of the payee or holder (unless that holder be a banker), but only at the request of the drawer. When a cheque marked at the instance of the drawer is presented it must be paid, and the banker may debit the drawer's account, notwithstanding any event, such as death or bankruptcy, that may have happened to the drawer in the interval between the marking of the cheque and presentation for payment. But this practice of marking cheques is falling into desuetude. Bankers now usually prefer to issue their own draft in exchange for the cheque.

In regard to the marking of cheques as between banker and banker, it has been judicially recognised that "a custom has grown up among bankers themselves of marking cheques as good for the purposes of clearance, by which they become bound to one another." For instance, it is a rule among London Clearing Bankers that all cheques on the Town Clearing Branches of the Clearing Banks must be presented through the Clearing House. In London, when a cheque from a customer is received too late for presentation, and the collecting banker for any reason desires to know its fate as early as possible, it is the practice for him to send the cheque direct to the drawee-banker after closing hours, with a request to mark the cheque. Cheques so marked are presented next day through the Clearing House in the usual way. In provincial towns the procedure is similar.

Since this marking is an appropriation of funds in the banker's hands for a specific purpose, he is entitled to deduct the amount of the marked cheque when estimating the balance available for meeting other cheques presented after the marked cheque, and he may debit the drawer's account with the marked cheque when it is actually presented for payment, notwithstanding that the drawer may have died or become bankrupt, or that a garnishee order may have been served on the banker in the meantime. The drawer has no power to countermand payment of a cheque marked for this purpose.

Whenever a cheque is marked by a banker, a note of it should be made in the relative account in the ledger, so that it may be

taken into consideration when estimating the balance available for meeting any other cheques that may be presented.

89. **Dishonour of Cheques.**—Whenever possible, cheques should be paid in the strict order of presentment, but if a banker dishonours a cheque for the reason that the funds of the drawer in his hands are insufficient to meet it, he is not entitled to dishonour a cheque presented afterwards, which is within the available balance. This is not so, however, in Scotland, in which country, by virtue of s. 53 (2), Bills of Exchange Act, 1882, a cheque operates as an assignment of the funds available in favour of the holder. The banker, therefore, in Scotland, where there is an insufficient balance to pay the whole of a cheque, would have to retain the balance as a discharge *pro tanto* for that particular cheque, and dishonour all cheques subsequently presented, even though the available balance was sufficient to meet them all, except the one first presented.

When it is necessary to return a cheque for the correction of a clerical error, the reason of the return should be clearly stated, so as not to cast any aspersion on the drawer's credit. Where possible, a cheque in which there is such a mistake should be sent direct to the drawer for correction, so as to avoid returning it.

In *London Joint Stock Bank v. Macmillan and Arthur*, 1918, there were some very significant statements in reference to the return of cheques. One learned judge said that "The customer contracts reciprocally that in drawing his cheques he will draw them in such a form as will enable the banker to fulfil his obligation, and therefore in a form which is clear and free from ambiguity." Elsewhere the same judge stated that a banker has a right to insist on having his mandate (*i.e.* the cheque) in a form which does not entail doubt as to what he is called on to do. Another judge said that "If there be on the face of the cheque any reasonable ground for suspecting that it has been tampered with," the banker is justified in returning the cheque and delaying payment until reference has cleared up the doubt. "Always granted that the doubt was reasonable, the refusal to pay is warranted." Accordingly, in all cases where cheques drawn in an unusual or ambiguous manner, or which bear evidence of having been tampered with, are presented for payment, they should be refused. The best answer is one which cannot be construed as casting any reflection on the drawers' credit, such as "Irregularly drawn: requires confirmation." (See also *Gilbart Lectures*, 1919.)

Where, owing to an insufficient balance, the return of a cheque

is unavoidable, it is usually better to mark it "Refer to Drawer" rather than "Not sufficient." If, however, the circumstances of the case seem, in the banker's opinion, to justify the latter marking, the banker should be careful not to say or write anything that would indicate how far the available balance falls short of the amount of the cheque, for the payee might tender the shortage, and then demand payment of the cheque, thus obtaining preference over the customer's other creditors. Once a cheque has been presented and payment refused, the holder is entitled to treat the cheque as dishonoured, even though he has been requested to re-present the cheque at a later date.

With regard to the return of unpaid cheques, the rules are based on the undoubted right of the payee or holder to know as soon as possible whether the cheque has been honoured or not. If both the collecting and the paying banker are in the same town, the cheque, unless the local rule is to the contrary, must be paid or returned on the day it is received. If a collecting banker in one town remits by post a cheque to the drawee-banker of another town, the drawee-banker need not return the cheque, if unpaid, until the day after receipt, though in this case the drawee-banker should, as a matter of courtesy, advise the collecting banker that he is holding the cheque over until the next day. If a customer pays in a cheque drawn by another customer of the same branch, the banker is not legally bound to return it until the next day, and he need not give any information about the cheque to the customer paying it in. Bankers, however, usually return such cheques on the day of receipt. If a Metropolitan or Country cheque is presented through the London Clearing House, the Rules provide that the banker who dishonours the cheque must send it back by return post direct to the bank into which it was paid.

The Rules of the London Clearing House provide that answers on dishonoured cheques, etc., must be written in words without abbreviation on such articles themselves, but where these Rules do not apply, it is probable that a written answer cannot be legally demanded.

Particulars of all cheques returned unpaid, together with the answer made, should be recorded in a book kept for the purpose. If a dishonoured cheque bears a foreign indorsement, it should be duly noted or protested (see p. 142).

90. *Cancelled in Error.*—If a banker inadvertently cancels a cheque, he should write, "Cancelled in error," and add his initials. The cancellation is then revoked.

91. **Paid Cheques.**—All cheques should be effectively cancelled as soon as they are paid.

92. **Forgery.**—Forgery is the act of falsely making or altering any writing for the purpose of doing injury to another person. Any alteration of a writing made with intent to defraud is a forgery. By s. 24, Bills of Exchange Act, 1882, “where a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorised signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority. Provided that nothing in this section shall affect the ratification of an unauthorised signature not amounting to a forgery.”

An example of “ratification of an unauthorised signature” would occur when a partner signed his name to a document purporting to bind the firm, though he had no power to do so, and the other partners afterwards recognised his unauthorised signature as binding on them. If a person’s signature is forged, the law will not permit him to adopt that forged signature as his own, for that would be compounding a felony, which is contrary to public policy, but, nevertheless, though his signature has been forged, he may, by his conduct, be precluded from denying its genuineness.

S. 24 taken by itself affords little or no protection to a paying or collecting banker who has handled a forged cheque, but its provisions are subject to other provisions of the same Act. S. 60 protects a banker who pays a cheque bearing a forged or unauthorised indorsement, and s. 80 the banker who pays a crossed cheque in conformity with the crossing, while s. 82 protects a banker who collects crossed cheques for a customer who has no title, or a defective title thereto. But these sections notwithstanding, both the collecting and the paying banker incur certain risks if they handle a cheque bearing a forged signature. The protection afforded bankers by ss. 60, 80 and 82 is called their “statutory protection.”

93. *The Chief Risks of Paying Banker.*—As regards the risks of forgery which the banker’s statutory protection does not cover, the chief of these in the case of cheques are: (1) the forgery of the drawer’s signature, and (2) fraudulent alterations, such as alterations of amount. Now where a banker pays a cheque bearing a forged signature of the drawer, or a fraudulent alteration,

such a payment to a person who is not aware of the forgery, is a mistake of fact, and the money therefore may be recovered from the party who has received it, provided the position of such party has not been altered before he was notified of the mistake. For instance, notice of the mistake must come to the party in sufficient time for him to give notice of dishonour to any other parties liable on the instrument. But if the money has been received in bad faith it can be recovered in any case.

94. *Forgery of Customer's Signature.*—If the signature of the drawer is forged, and the banker pays out the customer's money on the authority of the forged signature, the banker cannot usually debit his customer with the money paid out. The mandate on which the banker has acted is not his customer's mandate. But there may be exceptional circumstances which will enable the banker to debit his customer with a cheque bearing a forged signature. The customer by his conduct may have misled the banker, causing him to pay the cheque when otherwise it might have been refused. For example, if he does not repudiate the signature as soon as the forgery comes to his notice, and the banker pays it when otherwise he would have returned it, or if the banker is thereby prejudiced in any action he may take against the forger, or if by some act of his or by his conduct the customer has induced the banker to believe that the signature was a genuine one. What particular act or line of conduct precludes the drawer from denying the banker's right to debit him with a forged cheque is a question of fact. To enable the drawee-banker to return a cheque by reason of its forgery, he must discover the forgery in the usual time allowed for payment. (See *Dishonour of Cheques, ante.*)

95. *Fraudulent Alteration of Amount.*—When a customer draws a cheque in such a careful way that no palpable opportunity is given to anyone into whose hands the cheque may come to raise the amount with intent to defraud, and the amount is, nevertheless, fraudulently increased and the cheque paid, the banker cannot charge the customer with anything more than the original amount of the cheque. But where the customer, innocently but negligently, fails to take reasonable and proper precautions when drawing a cheque, and thus puts it into the power of any dishonest person to increase the amount by forgery, or where the customer signs a blank cheque, and the person who has authority to fill in the body of the cheque does so with a like carelessness, the position is different.

In *London Joint Stock Bank, Ltd. v. Macmillan & Arthur*, 1918,

the principle enunciated in the old case of *Young v. Grote*, 1827, was expressly approved by the House of Lords. In the course of his judgment, the Lord Chancellor said that "The relation between banker and customer is that of debtor and creditor, with a super-added obligation on the part of the banker to honour the customer's cheques if the account is in credit. A cheque drawn by a customer is in point of law a mandate to the banker to pay the amount according to the tenor of the cheque. It is beyond dispute that the customer is bound to exercise reasonable care in drawing the cheque to prevent the banker from being misled. If he draws the cheque in a manner which facilitates fraud he is guilty of a breach of duty as between himself and the banker, and he will be responsible to the banker for any loss suffered by the banker as a natural and direct consequence of this breach of duty." (*Times Law Reports*, July 5, 1918.)

The facts of *Young v. Grote* were briefly these: Young gave his wife five cheques signed in blank to be used by her for his business as and when necessary. One cheque for wages was given by Mrs. Young to a clerk to be filled up for £50 2s. 3d. The latter filled up the cheque for this amount, and showed it to Mrs. Young, but it was filled up in such a manner that he was able afterwards to raise the words and figures to £350 2s. 3d. The alterations were so made that they could not have been detected by any ordinary diligence. In the Macmillan case the cheque was fraudulently raised from £2 to £120. It was signed with the space for the amount in words left blank, and with a convenient space each side of the figure 2. The Lord Chancellor stated that "it was well settled law that if a customer signed a cheque in blank, and left it to a clerk or other person to fill it up, he was bound by the instrument as filled up by his agent."

96. *Other Fraudulent Alterations.*—Any material alteration unauthorised by the drawer renders a cheque void. The following alterations made without the drawer's consent would be material: "any alteration of the date, the sum payable, the time of payment, the place of payment" (Bills of Exchange Act, 1882, s. 64 (2)). So also the alteration of "Order" to "Bearer" (but not the mere striking out of the word "Bearer"), and any alteration in or obliteration of the crossing. Where the alteration, however, is for the purpose of correcting an obvious mistake, such an alteration may not avoid the instrument, but the onus lies on the person making the alteration to prove that it was made under such circumstances as not to avoid the instrument.

## CHAPTER VI

### CROSSED CHEQUES

**97. Definition.**—The legal definition of a crossed cheque as given in the Bills of Exchange Act, 1882, is as follows:—

Section 76 (1) “Where a cheque bears across its face an addition of—

(a) “The words ‘and company’ or any abbreviation thereof between two parallel transverse lines, either with or without the words ‘not negotiable’; or,

(b) “Two parallel transverse lines simply, either with or without the words ‘not negotiable,’ that addition constitutes a crossing, and the cheque is crossed generally.

(2) “Where a cheque bears across its face an addition of the name of a banker, either with or without the words ‘not negotiable,’ that addition constitutes a crossing, and the cheque is crossed specially and to that banker.”

There are two kinds of crossing, general and special. The name of a banker, without any lines at all, is sufficient to constitute a special crossing. Two transverse lines are the essential part of a general crossing, so that one line, or the phrases “not negotiable,” “account payee” or “under . . . pounds” without any lines, do not constitute a crossing. A crossing must be on the face of a cheque and should be across the middle, though it is found in a variety of positions. A perforated crossing is apparently in order.

The object of crossing a cheque is to prevent the payee or holder obtaining cash for it over the counter. The fact that a crossed cheque has to be paid into a banking account for presentation for payment by a banker renders it more difficult for a thief to encash a stolen cheque. Crossing is therefore a great source of protection to the drawer and the legitimate holder. When a cheque is crossed specially to a banker, then it must be presented by that banker. The words “and Co.,” so often associated with a crossing, arose

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from the practice in the early days of cheques, of writing these words as part of the title of a firm of bankers, leaving it to the payee to insert the remainder of the name. The custom originated in the time when robbery of the mails was not infrequent, and was intended to prevent cheques being presented by the thieves for encashment over the counter.

## FORMS OF CROSSING.

1.	2.	3.	4.	5.	6.	7.
Universal Bank, Ltd., Not negotiable.	Universal Bank, Ltd., Not negotiable.	& Company.	& Co.		Universal Bank, Ltd.	Universal Bank, Ltd.
8.	9.	10.				
		Remitted to the "X" Bank, Ltd., by the "Y" Bank for collection.		not negotiable.		

The first five are general crossings, the second five special crossings. Various expressions such as "Under £10 pounds," "A/c Payee," "A/c John Smith," are often added to any of these crossings, but they have no statutory sanction. The words "not negotiable" are either placed within or without the crossing as in Nos. 4 and 5. If written outside the lines the words must appear in proximity to the parallel lines.

**98. Persons Authorised to Cross.** Section 77 defines the powers of the drawer and holder as follows :—

- (1) "A cheque may be crossed generally or specially by the drawer.
- (2) "Where a cheque is uncrossed, the holder may cross it generally or specially.
- (3) "Where a cheque is crossed generally, the holder may cross it specially.
- (4) "Where a cheque is crossed generally or specially, the holder may add the words 'not negotiable.'
- (5) "Where a cheque is crossed specially, the banker to whom

it is crossed may again cross it specially to another banker for collection.

(6) "Where an uncrossed cheque, or a cheque crossed generally, is sent to a banker for collection, he may cross it specially to himself."

**99. Crossing a Material Part of Cheque.**—Section 78 runs— "A crossing authorised by this Act is a material part of the cheque; it shall not be lawful for any person to obliterate or, except as authorised by this Act, to add to or alter the crossing."

Where the crossing has been materially altered—as, for instance, the words "not negotiable" ruled through and not confirmed by the drawer—the banker on whom the cheque is drawn should refuse payment pending confirmation.

**100. Duties of Paying Banker as to Crossed Cheques.**—Section 79 sets forth the duties of the paying banker—

(1) "Where a cheque is crossed specially to more than one banker, except when crossed to an agent for collection being a banker, the banker on whom it is drawn shall refuse payment thereof."

Where there is a double crossing the banker, before paying the cheque, should make certain that the first banker is the agent of the second. A cheque crossed by two branches of the same bank is not crossed to two bankers.

(2) "Where the banker on whom a cheque is drawn which is so crossed nevertheless pays the same, or pays a cheque crossed generally otherwise than to a banker, or if crossed specially otherwise than to the banker to whom it is crossed, or his agent for collection being a banker, he is liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid."

A banker is not justified in paying a cheque in a manner inconsistent with the directions contained in the crossing. If he does so, and any loss ensue, he cannot debit the drawer's account with the cheque, because of his negligence. The liability of the banker to a third party, *i.e.* the true owner, is an exception to the general rule that the banker is accountable only to his customer.

Since a banker must not pay a cheque contrary to the crossing, it follows that, if the crossing is such that the banker is left in doubt what to do, he should return the cheque. If the cheque is crossed to two bankers, one of which is not the agent of the other, it is the practice to pay the cheque provided that the banker who

receives the proceeds will give an indemnity to the paying banker. The appropriate answer on such a cheque is "Crossed to two Bankers."

The crossing of a cheque is not nullified by its being returned unpaid, and, if re-presented, it should be paid to the banker to whom it is crossed. Where a cheque is received through the Clearing crossed by the collecting banker to his London agents, and is returned by the paying banker unpaid, the paying banker is justified in paying the cheque on re-presentation direct to the collecting banker, without the mediation of the London agents. A crossed cheque drawn by one customer in favour of another customer should be passed through the payee's account. The banker is not legally justified in paying the money over the counter to his payee-customer. If he gives cash for a crossed cheque drawn on himself to a payee well known to him, he does so at his own risk; and if the payee had received the cheque as agent or as trustee and misappropriated the money, the banker, having paid contrary to the crossing, could not debit the drawer's account.

The remainder of the foregoing subsection runs: "Provided that where a cheque is presented for payment which does not at the time of presentation appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered otherwise than as authorised by this Act, the banker paying the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned by reason of the cheque having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorised by this Act, and of payment having been made otherwise than to a banker or to the banker to whom the cheque is or was crossed, or to his agent for collection being a banker, as the case may be."

**101. Protection Afforded to Paying Banker.**—Section 80 provides that "Where the banker, on whom a crossed cheque is drawn, in good faith and without negligence pays it, if crossed generally, to a banker, and if crossed specially, to the banker to whom it is crossed, or his agent for collection being a banker, the banker paying the cheque, and, if the cheque has come into the hands of the payee, the drawer, shall respectively be entitled to the same rights and be placed in the same position as if payment of the cheque had been made to the true owner thereof."

The banker, in order to gain the protection of this section, must

pay the cheque in good faith and without negligence. But the word "pay" here does not include payment over the counter (except to another banker), so that, if a crossed cheque drawn on the banker is paid in by a customer, the banker must place it to the customer's account, and not cash or exchange it. This section refers only to cheques proper, but s. 17, Revenue Act, 1883, expressly extends the protection of the crossed cheques sections 76-82 to crossed documents analogous to, but not, strictly speaking, cheques at all.

S. 80 is the section to which the paying banker looks for his statutory protection, when paying crossed cheques to other banks, or other branches, or to the credit of other customers' accounts, in cases where the indorsements are forged, or where the proceeds of the cheques are paid to persons with a defective or no title. S. 60 protects the paying banker who pays open (*i.e.* uncrossed) cheques in similar circumstances over the counter, or to other bankers or branches. S. 79 protects the paying banker in regard to obliterated crossings or unauthorised alterations to crossing, subject in each case to the conditions laid down in the section.

It will be noticed that the drawer is protected by s. 80 in certain circumstances. This is dealt with on p. 43.

**102. Protection Afforded to Collecting Banker.**—This subject is treated on p. 103, where s. 82 is quoted.

**103. "Not Negotiable" Crossing.**—Section 81 runs: "Where a person takes a crossed cheque which bears on it the words 'not negotiable,' he shall not have and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had."

The transferability of a cheque is in no way restricted by the "Not Negotiable" crossing. The distinctive feature of negotiability is that a holder in good faith and for value takes the document free from any defect in the title of his transferor, and is therefore enabled to sue on the instrument in his own name. Now a party who takes a cheque bearing a "Not Negotiable" crossing, notwithstanding that he became the holder in an absolutely honest manner, has not and cannot give a better title than his transferor had. He thus becomes the holder of a cheque bearing a crossing which, while not destroying the quality of transferability possessed by the document, yet affects its negotiability. Such cheques may circulate quite freely, and provided that the title does not, while the cheque is passing from hand to hand, become defective, each

successive transferee acquires a good title. When, for example, a bearer cheque crossed "Not Negotiable" is stolen, and the thief induces a person to cash it, the person cashing it has no title to the cheque, and is liable to refund the money to the true owner, and this liability exists for the statutory period of six years. Since he has no title to the cheque he cannot sue the drawer if the cheque has been stopped.

The effect of crossing a cheque "not negotiable" must be carefully distinguished from the effect of making the cheque not transferable. Every cheque is transferable unless it contains "words prohibiting transfer or indicating an intention that it shall not be transferable" (see Bills of Exchange Act, 1882, s. 8 (4)). If the drawer wishes to make the cheque a non-transferable one, he should indicate the fact by the way he draws the cheque, as, e.g., "Pay A. B. only," while the words "order" or "bearer" should be struck out and the alteration initialled by the drawer, and, further, the words "Not Transferable" or their equivalent, should be plainly written horizontally on the face of the cheque.

Both the paying and the collecting banker retain the protection of the respective sections (ss. 80 and 82) when paying or collecting "not negotiable" cheques for their customers. The collecting banker does not lose his protection, unless guilty of negligence, even if he collects a "not negotiable cheque" for a customer who is not the payee. But if a banker cashes or exchanges a "not negotiable" cheque drawn on another banker, he loses the protection of s. 82, and will be liable to the true owner in the event of any previous holder having a defective or no title, on the ground that being a holder for value he (the banker) must stand or fall by the title of his transferor.

The words "not negotiable" have no significance apart from the recognised crossings, and if the words appear on the cheque without the parallel transverse lines, or without the name of the banker written across the cheque, the words "not negotiable" alone do not make the document a crossed cheque, and the banker, therefore, who pays or collects such a cheque is outside the protection of the crossed cheques section. It would appear that a banker could treat such a document as an open cheque and pay it over the counter, but the better course would be to return it on the ground that it is an embarrassing document. The words "not negotiable" need not be between the parallel lines—they may be written either above or below the lines—but, to be effective, the

words must be so placed as to show that they are connected with the statutory crossing.

**104. Documents other than Cheques which can be Effectively Crossed.**

—S. 95 enacts that “The provisions of this Act as to crossed cheques shall apply to a warrant for payment of dividend.” (See p. 198.) Bankers’ drafts may also be crossed. (See p. 182.)

S. 17 of the Revenue Act, 1883, provides that “Sections 76 to 82, both inclusive, of the Bills of Exchange Act, 1882, and s. 25 of the Forgery Act, 1861, shall extend to any document issued by a customer of any banker, and intended to enable any person or body corporate to obtain payment from such banker of the sum mentioned in such document, and shall so extend in like manner as if the said document were a cheque: Provided that nothing in this Act shall be deemed to render any such document a negotiable instrument.”

The documents referred to in this section, though not cheques, are somewhat similar in form, as, *e.g.*, an order from a customer to his banker authorising payment of a sum of money provided that the payee signs a form of receipt at the foot of the instrument. Documents issued by local authorities, drawn on their treasurers (unless the treasurer is a banker, see p. 237); are not within the section, because they are not issued by “a customer of any banker and intended to enable the payee to obtain payment from such banker.” To come within this section, the document must be drawn on a banker.

The Act specially provides that it does not render any document crossed by virtue of this section a negotiable instrument, and it would appear that these documents are not even legally transferable. Accordingly, if a banker pays one of these documents which bears evidence of having been transferred, *e.g.*, an indorsement other than that of the payee, the banker might lose the protection of s. 80 on the ground of negligence, although paying in accordance with the crossing.

As mentioned above, these documents are probably not transferable, and in order to obtain protection the collecting banker should collect them for the named payees only. Further, Sir John Paget considers that the Bills of Exchange (Crossed Cheques) Act, 1906, does not apply to the documents covered by this section and, therefore, if the collecting banker credits them at once as cash he loses any possible protection he may have under s. 82. (See also Conditional Orders to pay.)

105. "**Account Payee.**"—These words and variants such as "Payee's a/c," "Account A. B." etc., are often added to the crossing of a cheque. Such expressions have no statutory significance, since they are not sanctioned by the Bills of Exchange Act, 1882; and if added, as they frequently are in practice, to order or bearer cheques, they do not in any way affect their negotiability.

With regard to the paying banker it is obvious that, after fulfilling his duty of paying the cheque in good faith and without negligence, his responsibility ceases, and he cannot be expected to follow the money after it has reached the collecting banker, and insist upon the collecting banker paying it into the proper account. But the collecting banker is in a different position. These words are in the nature of a direction to him, and, if he places the money received to an account other than that of the specified payee, he stands to lose the protection of s. 82 on the ground of negligence. Hence the collecting banker should not collect cheques so marked except for the named payees.

Another variant is "A/c Payee only," sometimes strengthened by "Not Transferable." Both these forms are objectionable. If unaccompanied by transverse lines, and presented over the counter, the paying banker would be justified in refusing payment, with the answer, "Form of cheque irregular," or something similar. If the additions were on a crossed cheque payable to order, which bore evidence of having been credited to another account, the banker would be entitled to return it marked, "Crossing irregular: requires drawer's authority."

106. **Opening Crossed Cheques.**—It has become a practice, mainly amongst those customers whose cheque books bear a printed crossing, to cancel the crossing by writing "Please pay Cash" within the printed lines, and adding their signature or initials. In other cases, the drawer cancels a written crossing at the request of a payee who has no banking account. The cheque then becomes an open one, payable over the counter. The alteration is a material one and should be confirmed by the initials or, preferably, by the full signature of the drawer. It should not be forgotten, however that, since the cheque bears a genuine signature, it is a comparatively easy matter for a thief to forge initials or signature in confirmation of the alteration. There is need for special caution owing to the possibility of persons stealing cheques and forging the drawer's initials or signature to a cancellation of the crossing so as to obtain

cash for them over the counter, without the risk of passing them through a banking account.

Where the drawer himself opens the cheque and the payee himself presents it for payment, the banker is safe. But if the drawer's opening and signature or initials are forged, and the forger succeeds in cashing the cheque, the banker undoubtedly would be unable to debit his customer, and would also be liable to the true owner. The practice has no legal authority behind it, and it is doubtful whether it ought to be permitted at all.

In view of the numerous forgeries which had taken place the London Clearing Bankers in November, 1912, passed the following resolution: "That no opening of cheques be recognised unless the full signature be appended to the alteration and then only when presented for payment by the drawer or by his known agent."

## CHAPTER VII

### COLLECTION OF CHEQUES

**107. Collecting Banker.**—One of the principal functions of a banker is to receive instruments from his customer, in order to collect the proceeds and credit them to his customer's account. When acting in this capacity he is called a "collecting banker."

**108. Duties of Collecting Banker.**—"As his customer's agent in the matter, the banker is bound to use reasonable skill, care, and diligence in presenting and securing payment of the drafts entrusted to him for collection and placing the proceeds to his customer's account, or in taking such other steps as may be proper to secure the customer's interests" (Hart's *Law of Banking*, 4th edition, p. 532). If the customer suffers any loss through the negligence of the banker in any of these matters, the banker will be liable to the customer to the extent of the loss.

**109. Examination of Indorsements.**—The collecting banker is bound to examine the indorsements on all instruments to see that they purport to be in order, and, except where the instrument is a crossed cheque, he is liable if the indorsements are forged. Failure to notice that the indorsement on a crossed cheque sent to him for collection was not a correct indorsement has been held to be negligence sufficient to deprive him of his statutory protection.

If the indorsement is a *per pro.* indorsement, or an indorsement put on by delegated authority, the collecting banker may be put on inquiry as to the agent's power to sign, and collection of a cheque so indorsed without authority may involve the banker in liability for any loss that may ensue. Accordingly, where indorsements by agents are employed, the collecting banker should obtain a proper written authority, even where the instruments so indorsed are credited to the payees' accounts. Not only is the examination of indorsements and other signatures and particulars on instruments necessary for the collecting banker's own protection, but the practice

is desirable in the interests of banking business generally. For the discovery of irregularities before presentation minimises any risk of loss that may be occasioned through delay in payment, a loss for which the collecting banker might be held responsible if he had omitted to notice the irregularity in the first instance.

110. *Collection of Drafts on Other Bankers.*—The collecting banker must present with all diligence cheques sent to him for collection. Legally, he has until the day following receipt to present cheques payable at another banker in the same town, and where the cheque is drawn on another town, he need not send it off until the day following receipt, and if presentment is made through an agent, that agent can legally hold the cheque until the day following receipt by him. But it is the practice of bankers to forward on the day of receipt cheques required to be sent by post, and also to present cheques through the local clearing on the day of receipt if received in time, and, if not, on the day after receipt. Cheques on other towns are usually presented through the London Clearing House. Cheques payable alternatively, either at a country branch or in London, should be treated as London cheques unless time is saved by presenting them at the country branch.

When, for any reason, knowledge of the fate of a cheque is urgently required, it is sent direct to the drawee-bank with the request to advise fate by return of post or to wire fate. If a telegram is asked for, the cost of it should be enclosed with the cheque. As already stated, cheques received by post in this way may legally be held until the day after receipt, but, as a matter of courtesy, it is usual for the receiving banker to advise the presenting banker if he is holding the cheque over. Cheques presented through the Clearing House to banks in the Metropolitan and Country Clearing areas and dishonoured must be returned the same day direct to the bankers whose names and addresses are across them, and not to their London agents.

111. *Collection of Drafts on Himself.*—When the drawer of a cheque and the person paying it in are both customers of the same banker, the banker is considered to be the collecting agent of the customer who pays in the cheque. He is, therefore, entitled to receive it without comment, although he may know that the drawer has not funds sufficient to meet it, and he may legally hold the cheque until next day before returning it unpaid to the customer who has paid it in. If the banker acknowledges the receipt of such a cheque the acknowledgment cannot be taken by the customer to mean

that the cheque has been paid. But the usual practice of bankers is to return unpaid cheques drawn on themselves on the day of receipt, or to send an advice that they are being held over. Crossed cheques drawn by one customer, and paid in by another customer, are within the scope of s. 82, and the banker, therefore, does not lose his statutory protection when dealing with such cheques.

In the matter of presentation or of giving notice of dishonour the branches of a bank are entitled to the same time as if they were separate banks.

112. *Notice of Dishonour*.—This matter is treated on p. 138. The banker is entitled, on the ground of banking custom, to debit a dishonoured cheque to his customer's account, despite the fact that he may have allowed the customer to draw against the cheque before clearance, and even although the cheque may not bear the customer's indorsement. The position is different as regards a bill discounted by the banker for his customer. Unless the customer has indorsed the bill, he is not liable should it be dishonoured on maturity. It is imperative, therefore, that all bills tendered for discount should bear the customer's indorsement. If a bill or cheque is dishonoured on presentation, but, before the presenting banker has had time to return it to his customer, the instrument is reclaimed and paid, the banker should, nevertheless, inform his customer of what has happened. It is to the customer's interest that he should know that the drawer or acceptor is not perhaps so strong financially as he was supposed to be.

113. **Defect in Customer's Title**.—So long as the person for whom the instruments are collected is entitled at law to their contents, no difficulty arises. When, however, such person has a defective or no title to the instrument, there arises the question as to which party is to bear the responsibility for any loss suffered by the rightful or true owner by reason of other persons having dealt with the instrument. Unless the banker has *statutory protection*, as with *crossed cheques*, or unless he is a *holder in due course*, his right to retain the proceeds of instruments paid in by his customer depends on the customer's title. If the customer's title is defective, the banker (except as above) is liable to the true owner of the instrument for conversion, or for money had and received to his use. Conversion is the "wrongful intermeddling with the goods of another for the purpose of taking them away from the party entitled to them" (Hart's *Law of Banking*, 4th edition, p. 609). It must be "an unauthorised act which deprives another of his property per-

manently or for an indefinite time." A person who is innocently in possession of the goods, and has acted throughout without negligence, may yet be liable to an action for conversion, even if he did not benefit by the transaction.

The banker's liability exists for the statutory period of six years, and the true owner can claim as damages the value of the goods at the moment of conversion. In the case of a negotiable instrument this would be the sum stated on the face of the instrument. But though the banker may be sued for conversion, yet, being his customer's agent, he can claim to be indemnified by his customer, and is entitled to debit him with the amount he has had to pay the true owner.

It may be stated here that a collecting banker is a "holder" of bills and cheques paid in for collection within the meaning of the Bill of Exchange Act, 1882, even when acting strictly as a mere agent for collection, *i.e.* when he does not pay over the proceeds of cheques sent in for collection until he has received them from the paying banker. But for the purposes of this chapter, it is necessary to distinguish between the position of a collecting banker when a mere agent for collection and when he is collecting the proceeds of cheques for which he has already given cash, or against which he has permitted his customer to draw before they are cleared. The necessity for this distinction arises in connection with the banker's position when he has handled a cheque to which his customer has a defective or no title. When, therefore, in the following sections the banker is referred to as a "holder for value" or a "holder in due course," we refer to a banker who is collecting the proceeds of cheques for which he himself has given value.

**114. Collecting Banker's Statutory Protection.**—Section 82 of the Bills of Exchange Act, 1882, provides that "Where a banker in good faith and without negligence receives payment for a customer of a cheque crossed generally or specially to himself, and the customer has no title or a defective title thereto, the banker shall not incur any liability to the true owner of the cheque by reason only of having received such payment."

This section is amplified by the Bills of Exchange (Crossed Cheques) Act, 1906, which enacts that a banker receives payment of a crossed cheque for a customer within the meaning of the above section, notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof. This Act undoubtedly protects the collecting banker against the true owner of the cheque, when, in the ordinary course of business, he

credits crossed cheques as cash to his customer's account. And it seems logical to assume that the words "credits his customer's account" mean an effective *crédit*, *i.e.* one entered in the pass book and communicated to the customer (see *Gilbart Lectures*, 1925). If, however, there is an agreement, express or implied, between banker and customer, that the latter may draw against such cheques before clearance, then a different position is created, and the banker apparently becomes a holder for value (see next Section).

A "not negotiable" crossing is a general crossing, so that a collecting banker who is within the terms of s. 82 is protected when dealing with such cheques.

By virtue of s. 77 (5) and (6) of the Act of 1882, a banker is entitled to cross cheques sent uncrossed to him for collection, but if he does cross them he does not gain the protection of s. 82 which is only applicable to cheques which are *crossed before they reach the banker's hands*. If, therefore, a banker credits or pays the proceeds of an *uncrossed* cheque made payable to bearer or order, which he collects as agent for a customer or a stranger, he is liable to the true owner if the person who receives the money has no title to it. To safeguard themselves, some bankers print a notice on their paying-in slip books requesting customers to cross all cheques before paying in.

The banker's protection is dependent upon receiving payment "in good faith and without negligence." He would be guilty of negligence if he did not notice that an indorsement on an order cheque did not purport to be in order. He would also lose protection under this section if he permitted agents or employees to pay in to the credit of their private accounts cheques made payable to their principals, and, again, if he collected a cheque marked "account payee" for a customer other than the named payee.

Whilst a cheque bearing a *per pro.* indorsement does not, of itself, put the collecting banker on inquiry as to the authority of the person indorsing, and failure to make inquiries does not necessarily make the banker guilty of negligence, the circumstances may be such that the banker's omission to make inquiries will be evidence sufficient to deprive him of the protection of s. 82. The danger of allowing agents to put to their own private accounts cheques indorsed by them on behalf of their principals has been emphasised in a number of cases. Similarly, difficult positions arise when directors or other agents pay into their own accounts cheques drawn by them on behalf of their principals. This applies with particular emphasis to the so-called "one-man" companies, where the control is, for practical purposes,

vested entirely in one individual, though the company has a legal entity quite apart from himself.

To obtain protection, another condition must also be fulfilled, viz. that the collecting banker receives payment *for a customer*. The Act does not define the term "customer," but it would seem that any person keeping an account—current or deposit—is entitled to the description. It would appear from the judicial decisions that if a banker renders to a person services incidental to, but not peculiar to, the business of banking, he does not thereby constitute that person a customer.

A banker should not collect crossed cheques for a stranger, for if he does so, he has no right to the protection of s. 82, and will be liable to the true owner should it turn out that the stranger had no title. It is not sufficient to credit a "Sundry Persons" account and pay over the proceeds when received. A banker collecting for a customer a cheque drawn by another customer comes within the section: so also does banker A, employed by banker B to collect crossed cheques—banker A in this kind of transaction being the agent of his principal, banker B. The protection afforded by this section applies only to cheques as defined by the Act. (But see "Documents other than Cheques which can be Effectively Crossed," p. 97.)

To summarise for the sake of emphasis—the banker's statutory protection applies only to crossed cheques, received from a customer, in good faith and without negligence, and collected as a mere agent, save that the crediting as cash before clearance does not, of itself, deprive the banker of his character as a mere collector. If he does not fulfil all these conditions, or if the document is a bill or an uncrossed cheque, then in the event of there being a defect in the title of the person for whom the banker has collected the proceeds as a mere agent, then he is liable to the true owner.

It should be noted that if a customer is a holder in due course of an open cheque and there is a defect in the title of a previous holder, the collecting banker is protected under s. 29 (3), Bills of Exchange Act, 1882. (See Appendix, p. 264.)

**115. Collecting Banker who has given Value before Clearance.**—A banker, (1) when he gives cash in exchange for a cheque drawn on another branch or banker, (2) when he credits his customer with the amount of the cheque as soon as it is paid in and allows him to draw at once against the amount, and (3) when the cheque is expressly paid in to reduce an overdraft, is not a mere agent for collection but a holder who has given value for the instrument, the

proceeds of which he is collecting for himself. A banker in this position would generally be a "holder in due course" and entitled to all the rights of that position. (See also note on p. 125.)

A holder in due course is a holder who has taken a cheque or bill, complete and regular on the face of it, under the following conditions; namely, (a) that he became the holder of it before it was overdue, and without notice that it had previously been dishonoured, if such was the fact: (b) that he took the cheque or bill *in good faith* and *for value*, and that at the time it was negotiated to him he had no notice of any defect in the title of the person who negotiated it.

A holder in due course has certain valuable privileges. He can sue on the cheque or bill in his own name, and can enforce payment against all parties liable on the instrument. Moreover, he holds it free from any defect of title of the prior parties. In regard to the latter, it must be remembered that where the instrument is a cheque crossed "not negotiable," no person can have or give a better title than that which the person from whom he took it had. For example, suppose A draws a cheque "not negotiable" in favour of B, B indorses the cheque and C steals it. The banker or person who cashes the cheque cannot obtain any title to the cheque because C had none. If, however, the cheque had been an open or an ordinary crossed cheque, the banker or other person cashing it would have had a good title as a holder in due course.

A person who takes an overdue bill or cheque cannot be a holder in due course, and his title is subject to any defect of title affecting the instrument at its maturity. The fact that a tenor bill is outstanding after its due date, or a demand bill or a cheque after a reasonable length of time is a notice or warning to the transferee that everything may not be in order. He is therefore a holder with notice.

A banker cannot claim to be in the position of a holder for value and therefore become entitled to whatever advantages may, for the time being, attach to him in that capacity, unless he deals with the instrument in a way which implies something different from merely collecting the proceeds for his customer. He cannot, *e.g.*, claim to be a holder for value of a cheque merely because he has credited it to the account before clearance, unless there is also an agreement, express or implied, that the customer may draw against such cheques before clearance (*Underwood v. Barclays Bank, Ltd.*, 1924).

A banker may, however, sometimes be in the position of having a lien on the cheque or bill, in which case by virtue of s. 27 (3) of the Bills of Exchange Act, 1882, he is deemed to be a holder for

value to the extent of his lien. "Lien" is explained on p. 243.

It should be noted that where the instrument bears a forged or unauthorised indorsement, no rights can be obtained through or under such indorsement, and no party can become a "holder." In such a case, therefore, a banker, who has given value for the instrument is liable to the true owner, and has no right to recourse against any parties, except parties who indorsed the instrument after the forgery was committed.

**116. Cashing or Exchanging Cheques.**—A banker, if he cares to do so, is quite justified in cashing or exchanging cheques drawn on another banker, but, in any transaction of the kind, he is quite outside the protection of s. 82. His chief danger lies in his liability to the true owner, who is entitled to sue him should the indorsement prove to be forged or unauthorised, in which cases the banker cannot get a good title. And, if the cheque is a "not negotiable" crossed cheque, a defect in the title of any previous holder would render the banker liable to the true owner. Provided there is no question of a forged or unauthorised indorsement or of the cheque being overdue, or of a "not negotiable" crossing, the position of a banker who has taken the instrument in good faith is that of a holder in due course. To sum up, unless a cheque is a "not negotiable" crossed cheque, it makes no difference to the banker's risk whether the cheque is crossed or uncrossed. If the cheque is a bearer one, the risk is less, since no question of a forged or unauthorised indorsement can arise.

It is immaterial whether the cashing is done for a customer or a stranger. In either case, the banker is outside the protection of s. 82, and must fall back on his rights as a holder in due course. If the cashed or exchanged cheque bears the indorsement of the person who received the money, or if the banker holds the receiver's written request for its encashment, then the banker has recourse against him; otherwise, the receiver would probably not be liable on the instrument except in the case of a forgery. But the banker's rights against the receiver of the money do not affect his liability to the true owner. Moreover, there is the further risk that the cheque may be dishonoured for lack of funds, or the drawer may stop payment. In both cases, provided the indorsements are genuine, the banker could sue the drawer. He would, however, lose his right of suit against the drawer if the cheque was crossed "not negotiable," and he had cashed it for a person whose title was defective or non-existent.

## CHAPTER VIII

### BILLS OF EXCHANGE

**NOTE.**—Throughout this and the next two chapters the references refer to the sections of the Bills of Exchange Act, 1882, which is given in full in the Appendix.

**117. Introductory.**—Owing to the great development of banking in this country, the cheque has become the most popular instrument of payment. The bill of exchange, however, still plays an important part in financing the internal trade of the country. For trade purposes the bill of exchange has several important advantages over the cheque. The wholesale trader or manufacturer wants to get payment for his goods as soon as possible, in order that he may use the money to finance further transactions. On the other hand, the retailer, in many instances, does not want to pay for the goods until he has sold them. The bill of exchange possesses the qualities necessary to satisfy, in certain circumstances, both of these requirements. The wholesale trader draws a bill of exchange on his debtor, the retail trader, who “accepts” it, thereby engaging to pay it at a fixed future time. The bill is then returned to the wholesale trader, who has a document which he can discount with his banker, provided that both parties are of good financial standing. And the retailer has the term for which the bill is to run to sell his goods and thus provide himself with the requisite funds to meet his acceptance.

Bills of exchange offer further advantages to the business community. The creditor who takes a bill from his debtor has an instrument which (1) fixes definitely the date at which he is to receive payment, (2) affords written evidence of his debt in a convenient form, and (3) the creditor has an immediate right of recourse against the parties liable on the bill if it is dishonoured on its maturity.

**118. Definitions.**—A bill of exchange is an unconditional order in

writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order of a specified person, or to bearer (a). An instrument which does not comply with these conditions or which orders any act to be done in addition to the payment of money, is not a bill of exchange (b).

For an illustration of a condition which prevents an instrument from being a bill of exchange, see p. 30.

#### SPECIMEN FORMS.

Stamp.

£10.

On demand pay Mr. John Brown or order the sum of Ten pounds for value received.

*London,*  
*1st January, 1930.*

CHARLES SMITH.

To Mr. A. S. Robinson,  
3, East Street, Portlea.

Stamp.

£50.

On presentation pay Bearer the sum of Fifty pounds.

*Bristol,*  
*1st May, 1930.*

JOHN JONES.

To A. C. Davis, Esq.,  
Newport.

Stamp.

£20.

Pay Messrs. A. Dunn and C. Newton or order the sum of Twenty pounds for value received.

*Manchester,*  
*10th April, 1930.*

JAMES FREDERICK.

To Mr. G. Pearce,  
Midland Street, Liverpool.

(a) Section 3 (1).

(b) Section 3 (2).

Stamp.

£100.

One month after date pay to the order of The Southland Cycle Co., Ltd.,  
the sum of One Hundred pounds for value received.

*London,**1st April, 1930.***JOHN TAYLOR & CO.**

To Mr. John Stevens,  
Gravesend.

Stamp.

£50.

On 31st December, 1930, pay Mr. C. Harcourt or bearer Fifty pounds.

**HENRY GEORGE.**

To Maxton and Co., Ltd.,  
Leeds.

Stamp.

£100.

One month after sight pay to me or my order One Hundred pounds  
for value received.

*Dublin,**1st August, 1930.***JAMES PHILLIPS.**

To John Pritchard, Esq.,  
The Elms, Port Newton.

The person giving the order in a bill is called the "drawer," who is said to "draw" the bill. The person to whom the order is addressed is called the "drawee," and the person to whom, or to whose order, the money is to be paid, is called the "payee." Thus in the first example, Charles Smith is the drawer, A. S. Robinson is the drawee and John Brown the payee. The drawer, having written the order and signed it, sends the instrument to the drawee, who expresses his assent to the order by writing his name across it. By so doing the drawee is said to accept the bill, and thereupon becomes the "acceptor." If the drawee refuses to accept the bill he is said to dishonour it by non-acceptance. The acceptor returns the accepted bill to the drawer, who sends it to the payee, who negotiates the bill or presents the bill on its maturity. In some cases, particularly when a bill is drawn abroad the bill may be sent

to the payee before acceptance. If the acceptor refuses to pay on presentment he is said to dishonour the bill by non-payment. If the payee himself wished to negotiate the bill to another person he would write his name on the back of it ; that is to say, he would "indorse" the bill.

The first observation to be made about the legal definition of a bill of exchange is that the order to pay, issuing from the drawer and addressed to the drawee, must be unconditional. This does not mean that the drawee may not make his acceptance conditional, or that there may not be conditional indorsements : such conditions do not invalidate the instrument or take away from it its negotiable character. It is only the order to pay that must be unconditional. An order to pay out of a particular fund (such as "Pay A. B. or order One Hundred pounds out of proceeds of 50 bales of Cotton shipped per s.s. *City of Westminster*") is not unconditional ; but an unqualified order to pay, coupled with (1) an indication of a particular fund out of which the drawee is to reimburse himself, or a particular account to be debited with the amount ; or (2) a statement of the transaction which gives rise to the bill is unconditional (c). For example, the following order to pay has been held to be a valid bill : "Please pay to Messrs. X. or order £600 on account of moneys advanced by me for the S. and F. Co." (*Byles on Bills*, 17th edition, p. 117). If the example of an invalid bill quoted above had been worded as follows : "Pay A. B. or order One Hundred pounds against 50 bales of Cotton shipped per s.s. *City of Westminster*"—it would have been a valid bill.

The definition states that a bill of exchange must be in writing, but writing includes print and typewriting. The writing may apparently be done by a pencil. The written order must be addressed by one person, the drawer, to another person, the drawee, and it must be signed by the drawer, or by some one authorised to sign on his behalf. The order must require the person to whom it is addressed to pay the amount either on demand, or at a fixed time or determinable future time, to, or to the order of, a specified person or to bearer. The sum payable must be a sum certain. A bill need not specify the value given or the place where it was drawn or is payable (d).

For a further illustration of s. 3 of the Bills of Exchange Act, the reader should refer to Chapter III, s. 34.

The definition of a bill of exchange which has been explained

(c) Section 3 (3).

(d) Section 3 (4).

above is contained in s. 3, Bills of Exchange Act, 1882. S. 1 contains the short title, *i.e.* " Bills of Exchange Act, 1882," while s. 2 contains some preliminary definitions showing the meaning of certain words and phrases used in the Act. These are given in the text of the Act in the Appendix on p. 257. Those definitions which call for explanation are repeated below.

"Acceptance means an acceptance completed by delivery or notification." As we have seen above, the acceptor returns—or delivers—the bill to the drawer or the presenter, after having accepted it, but a notification by the acceptor of his acceptance to the party interested likewise renders the acceptance complete or irrevocable. "Holder means the payee or indorsee of a bill or note who is in possession of it, or the bearer thereof." He is the person in actual or constructive possession of the bill, and entitled at law to recover its contents from the parties to it. The term holder is given a very wide meaning in this definition. It includes, as the definition states, the payee, the indorsee, and the bearer of the bill. In regard to the payee, he is a party to the bill, so that his title is indefeasible, and so is that of an indorsee, though if he be merely an agent for collection, the bill having been indorsed to him for purposes of collection, he has to account to his principal. In the case of the bearer, who is defined in the Act as the person in possession of a bill or note payable to bearer, the holder may not necessarily be a lawful holder. For instance, the finder of a bill, duly indorsed so as to make it payable to bearer, is a "holder," but he has no title, though a *bona fide* transferee for value can get a good title. No person can get a title through a forged or unauthorised signature and such person is not a "holder." In the general way, the expression "holder" includes every person in lawful possession of the instrument.

There are also the expressions "holder for value" and "holder in due course." From s. 27 (2) we learn that "where value has at any time been given for a bill, the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time."

A "holder in due course" is a holder who has taken a bill, complete and regular on the face of it, (1) before it was overdue and without notice of previous dishonour, and (2) in good faith and for value, and without notice when the bill was negotiated to him of any defect in the title of the person who negotiated it (e).\*

(e) Section 29 (1).

\* See Note p. 125.

A “transferor by delivery” is the holder of a bill payable to bearer who negotiates it by delivery without indorsing it (*f*).

A person who signs a bill without receiving value therefor, and for the purpose of lending his name to some other person, is called an “accommodation party” (*g*).

A “referee in case of need,” or “case of need,” is a person whose name has been written on the bill by the drawer or an indorser and to whom the holder may resort in case of dishonour by non-acceptance or non-payment (*h*). A person does not become a party to a bill by merely being named as a “case of need.” And any person, who satisfies the conditions given in the next paragraph, may intervene without being mentioned on the bill as a “case of need.” The practice is obviously more applicable to bills drawn abroad, as in such cases the drawers, and possibly the indorsers, are not in a position quickly to take up bills dishonoured by the drawees or acceptors and so save their (the drawers’ or indorsers’) good names, since men of good financial standing object to bills upon which they are liable lying unpaid.

A person not already liable on the bill who, with the holder’s consent, accepts it after protest for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn, is called an “acceptor for honour” (*i*). A person who pays a bill after protest for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn, is called a “payer for honour” (*j*).

**119. Inland and Foreign Bills.**—An inland bill is one both drawn and payable within the British Islands, or drawn within the British Islands upon some person resident therein. Any other bill is a foreign bill. The British Islands include the United Kingdom of Great Britain and Northern Ireland,\* the islands of Man, Guernsey, Jersey, Alderney and Sark, and the islands adjacent to them forming part of the dominions of His Majesty (*k*). (See Chap. XI for the definition for stamping purposes.) Unless the contrary appear on the face of a bill the holder may treat it as an inland bill (*l*). An inland bill is generally a *sola* bill, that is to say, it appears on one piece of paper only. Foreign bills are generally drawn in “sets” of two or three. This type of bill is explained later.

(*f*) Section 58 (1).

(*g*) Section 28 (1).

(*h*) Section 15.

(*i*) Section 65 (1).

(*j*) Section 68 (1).

(*k*) Section 4 (1).

(*l*) Section 4 (2).

\* But exclusive of the Irish Free State (see p. 290).

The following examples illustrate the foregoing: (a) A bill drawn in London on a man resident in Paris and made payable in London, is duly accepted. It is an inland bill, because it is both drawn and payable in this country; (b) a bill, drawn in London on a man resident in Bristol, is accepted payable in Paris. It is an inland bill because it is drawn within the British Islands upon some person resident therein; (c) a bill drawn and accepted payable in London but indorsed in Paris, is an inland bill.

**120. Payee.**—Where a bill is not payable to bearer, the payee must be named or otherwise indicated with reasonable certainty (m). A bill may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or to one or some of several payees. A bill may also be made payable to the holder of an office for the time being (n). Where the payee is a fictitious or non-existing person the bill may be treated as payable to bearer (o). (See also p. 51). A bill may be drawn payable to, or to the order of, the drawer; or it may be drawn payable to, or to the order of, the drawee (p). For illustrations of these points, see p. 36.

**121. Drawee and his Acceptance.**—The drawee must be named or otherwise indicated in a bill with reasonable certainty (q), but a banker would be justified in paying a bill made payable with him, and duly accepted, if the drawee's name is omitted. A bill may be addressed to two or more drawees whether they are partners or not, but an order addressed to two drawees in the alternative or to two or more drawees in succession is not a bill of exchange (r). Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument at his option either as a bill of exchange or as a promissory note (s).

The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer (t). An acceptance must be written on the bill and be signed by the drawee: the mere signature of the drawee is sufficient, and the signature may be on the back of the bill. It must not express that the drawee will perform his promise by any other means than the payment of money (u). A bill may be accepted before it is signed by the drawer, or while

(m) Section 7 (1).

(n) Section 7 (2).

(o) Section 7 (3).

(p) Section 5 (1).

(q) Section 6 (1).

(r) Section 6 (2).

(s) Section 5 (2).

(t) Section 17 (1).

(u) Section 17 (2).

otherwise incomplete (*v*), or when it is overdue or after dishonour by non-acceptance or non-payment (*w*). When a bill payable after sight is dishonoured by non-acceptance, and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of first presentation to the drawee for acceptance (*x*).

An acceptance may be either "general," that is, an unqualified assent to the order of the drawer, or "qualified," that is, one which varies the effect of the bill as drawn (*y*). An acceptance is qualified which is "conditional," payment by the acceptor being then dependent on the fulfilment of a stated condition, or "partial," that is, an acceptance to pay part of the amount for which the bill is drawn, or "local," that is, an acceptance to pay at a particular place *and there only*, or qualified as to time, or the acceptance of some one or more of the drawees but not of all (*z*).

#### EXAMPLES OF GENERAL ACCEPTANCE.

- (1) Accepted, John Smith.
- (2) Accepted at 3, Commercial Street, Northtown, John Smith.
- (3) Accepted payable at Bullion Bank, Ltd., Northtown, John Smith.
- (4) John Smith.

#### EXAMPLES OF QUALIFIED ACCEPTANCE.

- (1) Conditional Acceptance. "Accepted payable on condition of one month's renewal, John Smith."
- (2) Partial Acceptance of Bill for £100. "Accepted for £50 only, John Smith."
- (3) Local Acceptance. "Accepted payable at Bullion Bank, Ltd., Northtown, *and there only*, John Smith."
- (4) Qualified as to time. Bill of Exchange drawn at one month after date. "Accepted payable three months after date, John Smith." (See also (1) above.)
- (5) Qualified as to parties. Bill drawn on John Smith and John Brown, accepted by one only. "Accepted, John Smith."

**122. Signature.**—No person is liable as drawer, indorser or acceptor of a bill who has not signed it as such (*a*), but a person signing in a trade or assumed name is liable thereon as if he had signed it in his own name (*b*), while the signature of the name of a firm is equivalent to the signature by the person so signing of the names of all persons liable as partners in that firm (*c*). A signature by

- (*v*) Section 18 (1).      (*w*) Section 18 (2).      (*x*) Section 18 (3).
- (*y*) Section 19 (1) and (2).      (*z*) Section 19 (2, *a*, *b*, *c*, *d*, and *e*).
- (*a*) Section 23.      (*b*) Section 23 (1).      (*c*) Section 23 (2).

procuration operates as notice that the agent has but a limited authority to sign, and the principal is only bound by such signature if the agent in so signing was acting within the actual limits of his authority (d). Where a signature indicates that the signatory signs for or on behalf of a principal, or in a representative character, he is not personally liable; but the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not free him from personal liability (e).

Subject to certain statutory exceptions, a forged or unauthorised signature is wholly inoperative, and no right to retain the bill, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority, but an unauthorised signature not amounting to a forgery may be ratified (f).

The drawee is precluded from denying to a holder in due course "the existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill" (g). Accordingly, if the drawee accepts a bill to which the drawer's signature has been forged, the drawee will not be able to set up the forgery against a banker, provided the banker is a holder in due course. It is the duty of the drawee to make certain that the bill he accepts bears a genuine signature made or authorised by the drawer, and if he accepts a forged bill he does so at his peril.

With regard to indorsements a different position arises, as the drawee, where the bill is drawn payable to the drawer's order, is precluded from denying the drawer's capacity, but not the genuineness or validity of his indorsement, even if the indorsement is on the bill at the time it is accepted (h). And where the bill is made payable to the order of a third person, the drawee cannot deny the existence of the payee and his capacity to indorse, but he can deny the genuineness or validity of the payee's indorsement.

As regards a banker who pays a bill of exchange domiciled with him which bears a forged indorsement, the statutory protection given to bankers by s. 60 applies only to cheques. Hence, if the banker pays a bill through or under a forged indorsement he is liable to the true owner in an action for conversion. In addition, he

(d) Section 25.

(e) Section 26 (1).

(f) Section 24.

(g) Section 54 (2, a).

(h) Section 54 (2)

cannot debit his customer's account with the money he has paid on such a bill, unless the customer by his acts or conduct is precluded from setting up the forgery. But where the bill was *originally* drawn payable to bearer, or where it has become payable to bearer by genuine indorsement in blank, the banker who has paid it to a holder who has no title has a good discharge against his customer, since he has paid the bearer of a bearer bill. If the payee is a fictitious or non-existing person, the bill may be treated as payable to bearer, so that the banker is protected should he pay such a bill under a forged indorsement.

**123. Amount.**—The sum payable by a bill must be a sum certain, even though it is required to be paid (1) with interest, or (2) by stated instalments, or (3) by stated instalments with a provision that, upon default in payment of any instalment, the whole shall become due, or (4) according to a rate of exchange to be ascertained as directed by the bill (i). When there is a discrepancy between the amounts as expressed in words and in figures, the sum denoted by the words is the amount payable (j). Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, interest runs from the date of the bill, and if the bill is undated from the issue thereof (k). Interest expressed to be payable in a bill should be distinguished from the interest awarded as damages on dishonour. An alteration of the amount is a material alteration (l).

Where a bill is drawn out of but payable in the United Kingdom, and the sum payable is not expressed in the currency of the United Kingdom, the amount, in the absence of some express stipulation, is calculated according to the rate of exchange for sight drafts at the place and on the day of payment (m).

**124. Date of Bill and Computation of Due Dates.**—The omission of the date does not render a bill invalid (n). Where a bill expressed to be payable at a fixed period after date is issued undated, or where the acceptance of a bill payable at a fixed period after sight is undated, the holder may insert the true date of issue or of acceptance, and the bill is payable according to the date so inserted. If the holder in good faith and by mistake inserts a wrong date, and in every case where a wrong date is inserted if the bill subsequently comes into the hands of a holder in due course, the bill shall be payable as if the date so inserted had

(i) Section 9 (1).

(j) Section 9 (2).

(k) Section 9 (3).

(l) Section 64 (2).

(m) Section 72 (4).

(n) Section 3 (4).

been the true date (*o*). A date on a bill is, in the absence of evidence to the contrary, deemed to be the true date (*p*). A bill may be ante-dated, post-dated or dated on a Sunday (*q*). Any alteration of the date of a bill is a material alteration (*r*).

A bill must be payable on demand or at a fixed or determinable future time (*s*). A bill is payable on demand which is expressed to be so payable, or which is payable at sight or on presentation or in which no time for payment is expressed (*t*). Where a bill is accepted or indorsed when it is overdue, it shall, as regards the acceptor who so accepts, or any indorser who so indorses it, be deemed a bill payable on demand (*u*). A bill is payable at a determinable future time which is expressed to be payable (1) at a fixed period after date or sight (*v*), or (2) on or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening may be uncertain. An instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect (*w*).

Where a bill is not payable on demand three days of grace are, unless the bill otherwise provides, added to the time of payment as fixed by the bill, and the bill is payable on the last day of grace (*x*). No days of grace can be claimed on bills drawn "payable without days of grace," or payable on a certain date "fixed." Thus a bill drawn "On May 5, 1923, fixed, pay, etc.," falls due on May 5, 1923, while a bill drawn "On May 5, 1923, pay, etc.," falls due on May 8, 1923. Where a bill is payable by instalments days of grace can be claimed on each instalment. Bank post bills issued by the Bank of England are paid without days of grace. It should be noted that bills drawn one, two or three days after date or sight take the three days of grace though subject only to the twopenny stamp duty.

The currency of a tenor bill is the period of time during which it is current, *i.e.* the period between its date of issue and its due date. The day after a tenor bill is due to be paid the bill is no longer current. When a bill is payable so many months after date, the due date is calculated by counting the required number of calendar months from the date of the bill, and adding the three days of grace. The term "month" means a calendar month (*y*).

( <i>o</i> ) Section 12.	( <i>p</i> ) Section 13 (1).	( <i>q</i> ) Section 13 (2).
( <i>r</i> ) Section 64 (2).	( <i>s</i> ) Section 3 (1).	( <i>t</i> ) Section 10 (1).
( <i>u</i> ) Section 10 (2).	( <i>v</i> ) Section 11 (1).	( <i>w</i> ) Section 11 (2).
( <i>x</i> ) Section 14 (1).	( <i>y</i> ) Section 14 (4).	

This does not mean that a bill dated, say, April 30th at one month after date falls due on June 3rd (that is to say, May 31st plus three days of grace). Such a bill falls due on June 2nd (one month from April 30th brings us to May 30th); three days of grace added make June 2nd. The term "calendar month" in the Bills of Exchange Act is probably used to distinguish a "bill" month from a lunar month of four weeks. At all events by the universal custom of bankers a bill dated on, say, September 30th at three months after date falls due on January 2nd, not on January 3rd. Where a bill is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the day of payment (z). No account must be taken of "lacking" days, so that a bill dated 31st January at one month after date falls due on 3rd March.

When a bill is payable after sight, the time begins to run from the date of acceptance, if the bill be accepted (a). If the sighting date does not coincide with the date of acceptance, the due date is calculated from the sighting date. Thus if a bill is accepted "Sighted 1st May, Accepted 2nd May," the period runs from the sighting date, not from the date of acceptance. If a bill has been noted or protested for non-acceptance or non-delivery the period runs from the date of noting or protest (b). Where a bill payable after sight is accepted for honour, its maturity is calculated from the date of the noting for non-acceptance and not from the date of acceptance for honour (c). The motive in these cases is to put the holder in the same position as he would have been, had the bill been duly and promptly accepted on presentation.

Where bills drawn abroad are payable "middle of January," "middle of February," and so on, such bills are generally considered to fall due on the 18th of the month; this date is arrived at by adding three days to the 15th. In some foreign countries days of grace are not allowed, but bills drawn in such countries payable in this country take the usual three days. Where bills drawn in Russia and some other Eastern countries are dated according to the old style, thirteen days must be added to bring the date into agreement with the calendar we use. Sometimes both styles of dating are given, such as May 5/18: the time is reckoned, of course, from the 18th. Where a bill is drawn in one

(z) Section 14 (2).  
(b) Section 14 (3).

(a) Section 14 (3).  
(c) Section 65 (5).

country and is payable in another the due date thereof is determined according to the law of the place where it is payable (d).

When the last day of grace falls on Sunday, Christmas Day, Good Friday, or a day appointed by Royal Proclamation as a public fast or thanksgiving day, the bill is, except in the case hereinafter provided for, due and payable on the preceding business day (e). When the last day of grace is a bank holiday (other than Christmas Day or Good Friday), under the Bank Holidays Act, 1871, and Acts amending or extending it, or when the last day of grace is a Sunday and the second day of grace is a bank holiday, the bill is due and payable on the succeeding business day (f).

Bank holidays in England and Ireland are Easter Monday, Whit Monday, first Monday in August, and 26th December if a week-day. If the 26th December is a Sunday, Monday, 27th December, becomes a bank holiday. The bank holidays in Scotland are New Year's Day (if this day falls on a Sunday the next day becomes a bank holiday), first Monday in May, and first Monday in August. Christmas Day and Good Friday were formerly "statutory" holidays in Scotland, and "common law" holidays in England and Ireland, but Scotch law is now uniform with English law. In Ireland, by the Bank Holiday (Ireland) Act, 1903, St. Patrick's Day, March 17th, is a bank holiday, and if this day falls on a Sunday then the next day.

**125. Alterations.**—"An alteration is material," says Chalmers, "which in any way alters the operation of the bill and the liabilities of the parties, whether the change be prejudicial or beneficial; and it may be that even this test is not wide enough."

A material alteration of a bill or acceptance, without the assent of all parties, discharges the bill except as against a party who made, authorised or assented to the alteration, and subsequent indorsers, but where an alteration is not apparent, and the bill is in the hands of a holder in due course, such holder may avail himself of the bill as if it had not been altered, and may enforce payment according to its original tenor (g). Material alterations, amongst others, are alterations of the date, amount, time of payment, place of payment, and where a bill has been accepted generally the addition of a place of payment without the acceptor's assent (h). (See p. 37 for an explanation of these rules in relation to cheques.)

(d) Section 72 (5).  
(g) Section 64 (1).

(e) Section 14 (1a).  
(h) Section 64 (2).

(f) Section 14 (1b).

**126. Consideration for a Bill.**—Consideration has been defined as “some right, interest, profit or benefit accruing to the one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other.” To be valid, contracts not under seal must be supported by consideration. Reference to the consideration need not be made in the body of the bill, though, as a matter of fact, the words “value received” are often included. Valuable consideration for a bill may be constituted by any consideration sufficient to support a simple contract or by an antecedent debt or liability (*i*).

Where value has at any time been given for a bill the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time (*j*). The holder of a bill who has a lien on it is a holder for value to the extent of his lien (*k*). An accommodation party to a bill, that is, a party who has signed it without having received any consideration for so doing, is liable on the bill to a holder for value, whether the holder knew such party was an accommodation party or not (*l*). Every party whose signature appears on a bill is *prima facie* deemed to have become a party thereto for value (*m*).

**127. Inchoate Bills.**—A simple signature on blank stamped paper delivered by the signer in order that it may be converted into a bill operates as a *prima facie* authority to fill it up as a complete bill for any amount the stamp will cover, using the signature for that of the drawer, acceptor or indorser, as the case may be. Similarly, if a bill is wanting in any material particular the person in possession of it has a *prima facie* authority to fill up the omission in any way he thinks fit (*n*). Such an instrument can be enforced against any person who became a party prior to its completion only if it was filled up within a reasonable time, and strictly in accordance with the authority given. But a holder in due course to whom such an instrument has been negotiated after completion, may enforce it as if it had been filled up within a reasonable time and in accordance with the authority given (*o*).

**128. Issue and Delivery.**—Issue is the first delivery of a bill or note, complete in form to a person who takes it *as a holder* (*p*).

Delivery of a bill is its transfer of possession, actual or constructive, from one person to another (*q*). Every contract on a bill

( <i>i</i> ) Section 27 (1).	( <i>j</i> ) Section 27 (2).	( <i>k</i> ) Section 27 (3).
( <i>l</i> ) Section 28.	( <i>m</i> ) Section 30 (1).	( <i>n</i> ) Section 20 (1).
( <i>o</i> ) Section 20 (2).	( <i>p</i> ) Section 2.	( <i>q</i> ) Section 2.

is incomplete and revocable until delivery of the instrument in order to give effect thereto, but where an acceptance is written on a bill it is irrevocable if the drawee has given notice to, or according to the directions of the person entitled to the bill that he has accepted it (*r*). Delivery as between immediate parties, and as regards a remote party other than a holder in due course, must be made by the proper party or under his authority, and may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the bill. If, however, the bill be in the hands of a holder in due course, a valid delivery of the bill by all parties prior to him, so as to make them liable to him, is conclusively presumed (*s*). Where a bill is no longer in the possession of a party who has signed it as drawer, acceptor or indorser a valid and unconditional delivery is presumed until the contrary is proved (*t*).

**129. Negotiable Bills and Negotiation.**—The characteristics of a fully negotiable instrument are stated in another part of this book (see p. 247). A negotiable bill may be payable either to order or to bearer (*u*). A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer, or indicating an intention that it shall not be transferable (*v*). A bill is payable to bearer which is expressed to be so payable or on which the only or last indorsement is an “indorsement in blank” (*w*), that is, one that specifies no indorsee (*x*). A bill expressed to be payable to the order of a specified person, and not to him or his order, is nevertheless payable to him or his order at his option (*y*).

A bill which contains words prohibiting transfer, or indicating an intention that it should not be transferable, is not negotiable (*z*), but the words prohibiting transfer must be definite. A bill payable to order or bearer cannot be made not transferable on the face of it, for the word “order” or “bearer” overrides the words prohibiting transfer. The words “not negotiable” when added to a crossed cheque have a special statutory significance, as explained elsewhere.

The negotiation of a bill is its transfer from one person to another in such a manner as to constitute the transferee the holder of the

(*r*) Section 21 (1).

(*s*) Section 21 (2).

(*t*) Section 21 (3).

(*u*) Section 8 (2).

(*v*) Section 8 (4).

(*w*) Section 8 (3).

(*x*) Section 34 (1).

(*y*) Section 8 (5).

(*z*) Section 8 (1).

bill (a). A bill payable to bearer is negotiated by delivery, (b) if to order by indorsement and delivery (c). A bill negotiable in its origin continues to be negotiable until it has been either restrictively indorsed or discharged (d).

When an overdue bill is negotiated it can only be negotiated subject to any defect of title affecting it at its maturity, and thence-forward no person who takes such a bill can acquire or give a better title than that which the person from whom he took it had (e). For the purposes of negotiation, a bill payable on demand is deemed to be overdue when it appears on the face of it to have been in circulation an unreasonable length of time, and what is unreasonable is a question of fact (f). (See p. 34 in regard to overdue cheques.) Except where an indorsement bears date after the maturity of the bill, every negotiation is *prima facie* deemed to have been effected before the bill was overdue (g). Where a bill which is not overdue has been dishonoured, any person who takes it with notice of the dishonour takes it subject to any defect of title attaching thereto at the time of dishonour, but this does not affect the rights of a holder in due course (h).

The holder of a bill has certain rights acquired by negotiation. He may sue on the bill in his own name (i). Where he is a holder in due course, he holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties amongst themselves, and may enforce payment against all parties liable on the bill (j). Where his title is defective : (1) if he negotiates the bill to a holder in due course that holder obtains a good and complete title to the bill, and (2) if he obtains payment of the bill the person who pays him in due course gets a valid discharge for the bill (k).

A "transferor by delivery" is the holder of a bill payable to bearer who negotiates it by delivery without indorsing it. When such a transferor negotiates a bill he warrants to his immediate transferee, being a holder for value, that the bill is what it purports to be, that he has a right to transfer it, and that at the time of transfer he is not aware of any fact which renders it valueless (l). In these circumstances he is not liable on the instrument in the event of it being dishonoured by non-acceptance or non-pay-

(a) Section 31 (1).	(b) Section 31 (2).	(c) Section 31 (3).
(d) Section 36 (1).	(e) Section 36 (2).	(f) Section 36 (3).
(g) Section 36 (4).	(h) Section 36 (5).	(i) Section 38 (1).
(j) Section 38 (2).	(k) Section 38 (3).	(l) Section 58 (3).

ment, but he does not escape liability if there is a prior forgery. For this reason, therefore, bankers always get their customers' indorsements on bills discounted.

**130. Capacity of Parties.**—Capacity to incur liability as a party to a bill is co-extensive with capacity to contract (*m*). Where a bill is drawn or indorsed by an infant or corporation having no capacity to incur liability on a bill, the drawing or indorsement entitles the holder to receive payment of the bill, and to enforce it against any other party thereto (*n*).

**131. Liabilities of Parties and Estoppels.**—The drawee by accepting the bill is the person primarily liable. By accepting he engages to pay it according to the tenor of his acceptance (*o*), and is precluded from denying to a holder in due course (1) the existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill; (2) in the case of a bill payable to the drawer's order the then capacity of the drawer to indorse, but not the genuineness or validity of his indorsement; (3) in the case of a bill payable to the order of a third person, the existence of the payee and his then capacity to indorse, but not the genuineness or validity of his indorsement (*p*).

When the drawer of a bill delivers it to the payee, or, if it is payable to himself, when he indorses it to another person, the drawer himself becomes liable to the holder. By the act of drawing the bill the drawer engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or any indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken. He is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse (*g*).

Where there are two or more indorsements on a bill, each indorsement is deemed to have been made in the order in which it appears on the bill, until the contrary is proved. The first indorser in point of time is liable to the second, the second in point of time is liable to the third, and so on. (The liabilities of an indorser, and the estoppels binding him, are given fully in Chapter IV, p. 46.)

**132. Bill not an Assignment of Funds in Hands of Drawee.**—In England a bill does not operate as an assignment of funds in the hands of the drawee available for the payment thereof, and if the

(*m*) Section 22 (1).  
(*p*) Section 54 (2).

(*n*) Section 22 (2).  
(*q*) Section 55 (1, *a*, *b*).

(*o*) Section 54 (1).

drawee does not accept he is not liable on the instrument (*r*). In Scotland, however, where the drawee of a bill has in his hands funds available for the payment thereof, the bill operates as an assignment of the sum for which it is drawn in favour of the holder from the time when the bill is presented to the drawee (*s*).

(*r*) Section 53 (1)

(*s*) Section 53 (2).

*Note to pp. 106 and 112: Holder in due course.* In the case of *Jones, R. E., Ltd., v. Waring and Gillow*, 1926, it was decided by the House of Lords that the original payee of a bill or cheque is not a "holder in due course" within the meaning of s. 29. Before a person can be a holder in due course, the bill or cheque must have been negotiated to him; the original delivery of the instrument is not such a negotiation.

## CHAPTER IX

### BILLS OF EXCHANGE (*continued*)

**133. Presentment for Acceptance.**—A bill should be presented for acceptance as soon as possible, for until the drawee has accepted it, he is not liable to the holder. Refusal of acceptance gives the holder an immediate right of recourse against the drawer and indorsers. But though presentment for acceptance is advisable it is not legally necessary except in three cases : (1) Where a bill is payable after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument (*a*). Where such a bill is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time (*b*). If he does not do so, the drawer and all indorsers prior to that holder are discharged (*c*). (2) Where a bill expressly stipulates that it shall be presented for acceptance, or (3) where a bill is drawn payable elsewhere than at the residence or place of business of the drawee it must be presented for acceptance before it can be presented for payment (*d*).

**134. Rules Governing Presentment for Acceptance.**—The rules governing presentment for acceptance are as follows : The presentment must be made by or on behalf of the holder to the drawee or to some person authorised to accept or refuse acceptance on his behalf, at a reasonable hour on a business day, and before the bill is overdue (*e*). If there are two or more drawees, not partners, presentment must be made to them all, unless one has authority to accept for all, in which case presentment may be made to him only (*f*). Where the drawee is dead, presentment may be made to his personal representative (*g*) ; if bankrupt, to him or to his trustee (*h*). Where authorised by agreement or usage a presentment through the post office is sufficient (*i*).

( <i>a</i> ) Section 39 (1).	( <i>b</i> ) Section 40 (1).	( <i>c</i> ) Section 40 (2).
( <i>d</i> ) Section 39 (2).	( <i>e</i> ) Section 41 (1, <i>a</i> ).	( <i>f</i> ) Section 41 (1, <i>b</i> ).
( <i>g</i> ) Section 41 (1, <i>c</i> ).	( <i>h</i> ) Section 41 (1, <i>a</i> ).	( <i>i</i> ) Section 41 (1, <i>e</i> ).

The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance may treat the bill as dishonoured by non-acceptance (j). If a qualified acceptance is taken without the authorisation or subsequent consent of the drawer or an indorser, such drawer or indorser is discharged from his liability on the bill, but this rule does not apply to a partial acceptance provided due notice has been given (k). A drawer or indorser receiving notice of a qualified acceptance is deemed to have assented thereto unless he express his dissent to the holder within a reasonable time (l).

135. *When Presentment for Acceptance is Excused.*—Presentment of the bill for acceptance is excused, and the bill may be treated as dishonoured by non-acceptance : (1) where the drawee is dead or bankrupt, or is a fictitious person, or a person not having capacity to contract by bill (m) ; (2) where, after the exercise of reasonable diligence, such presentment cannot be effected (n) ; (3) where, although the presentment has been irregular, acceptance has been refused on some other ground (o). The fact that the holder has reason to believe that the bill, on presentment, will be dishonoured does not excuse presentment (p).

136. *Banker Presenting Bill for Acceptance.*—Where a banker holds an unaccepted bill on his own behalf, he will, in his own interests, present it for acceptance as early as possible, because on acceptance he obtains additional security in the acceptor's liability, and, if acceptance is refused, he can take action at once against the other parties. The same considerations arise when a banker receives an unaccepted bill for presentation on behalf of a customer, and although in certain cases presentment for acceptance is not legally necessary in order to retain recourse against the drawer and indorsers, the banker must act in a manner most beneficial to his customer's interests, irrespective of any latitude the law allows him. As his customer's agent, the banker must exercise skill and diligence in serving his customer's interests, and since early presentment is very advantageous, the banker must make early presentment ; if he fails to do so, and loss ensues to his customer, then the banker will be responsible.

If the work which the banker has undertaken to do, whether by

(j) Section 41 (1). (k) Section 44 (2). (l) Section 44 (3).

(m) Section 41 (2, a). (n) Section 41 (2, b). (o) Section 41 (2, c).

(p) Section 41 (3).

express agreement or by implication, is delegated to an agent or correspondent, the banker will be held responsible for the acts or the agent or correspondent, and is liable for any loss sustained by the customer through the negligence of the agent or correspondent.

Accordingly, when an unaccepted bill is received for presentment, the banker should present it without delay. Generally speaking, he would present it on the day of receipt. If, however, the bill has only two or three days to run, presentment for acceptance is sometimes delayed until the due date, when it is presented both for acceptance and payment. But there is an element of risk even in a brief delay like this. When a bill is presented to the drawee for acceptance he is entitled to possession of it, and may retain it for twenty-four hours. Hence, if the drawee does not accept or refuse at once, the banker is quite justified in leaving the bill with him, but it should be called for the next day. In calculating the twenty-four hours, non-business days are excluded. Should the drawee refuse to deliver up the bill, accepted or unaccepted, after the expiration of this period, or destroy it, he is liable in an action for damages.

When a bill has to be presented in a place not within the bank's area of call, the banker sends it to his agent for presentment by him, or if there is no banker near, the bill may be sent by post to the drawee, a stamped addressed envelope being enclosed for its return. When any of the circumstances are out of the ordinary and the banker is unable to effect prompt presentment for acceptance he should always advise his customer or correspondent of the circumstances. This should be done as a matter of courtesy, even if not legally necessary.

A banker must not take a qualified acceptance without the consent of his principal. If he is offered a qualified acceptance he should communicate at once with his customer or correspondent asking for instructions. A banker should not take the drawee's cheque and surrender the bill, because this would release the drawer and indorsers of the bill, and if the cheque is dishonoured, the drawer and indorsers of the bill, not being parties to the cheque, are not liable on the cheque. Before taking a cheque, therefore, the principal's consent must be obtained. It should be noted, however, that, by taking a cheque, the banker secures an instrument on which the drawee is liable, whereas he is not liable as drawee of a bill, but, if a cheque is taken the bill must not be

given up. The practice is to attach the bill to the cheque and surrender it with the cheque on its payment.

A bill may be accepted on the back, but it is usual to accept on the face of the instrument. Since in this country a signature prefixed by a courtesy title is not accepted as a signature, the acceptor should not sign in this manner, but an expression added by way of description would not invalidate the acceptance. When bills are drawn payable "after sight," the date of "sighting," which should be the date on which the bill is first presented to the drawee, must be added to the acceptance, and the currency of the bill will run from the sighted date even if the date of acceptance is a day later. If no place of payment is specified in the bill, the banker cannot insist on the drawee making it payable in the banker's or the drawee's own town, and, as the addition of a place of payment is a material alteration, the banker cannot add one without the acceptor's consent.

The only person competent to accept a bill is the drawee or his authorised agent, and if a bill is drawn on one party and accepted by another, the latter is not liable on the instrument as an acceptor, but he incurs the liabilities of an indorser to a holder in due course. If a bill is addressed to a trading partnership any partner can bind the firm by signing the firm's name. Where the partnership is a non-trading one the position is different, and only the partner that accepts will be personally liable, unless his co-partners have authorised him to accept on their behalf. Where a bill is drawn on two or more drawees, who are not partners, each of the drawees must accept, unless one is specially authorised to accept on behalf of all. If all do not accept, those who do accept are liable, but the acceptance would be a qualified one. A banker who receives a bill of this nature for presentment for acceptance should present it to each of the drawees, unless one drawee has proper authority to accept for all.

An infant is not liable on an acceptance given in his personal capacity, but, if acting within the scope of his authority as agent, he can bind his principal. In accordance with the rules already given, presentment, in the case of a bankrupt drawee, may be made either to the bankrupt himself or to his trustee. If the drawee is dead, presentment may be made to his legal representative. Presentment in these two cases is not legally necessary under the Act, but it is desirable that a banker should make due presentment.

When a bill which a banker has presented on behalf of a

customer or another banker is dishonoured by non-acceptance, the banker should return it to the customer or correspondent. If the bill is a foreign bill it must be protested on dishonour by non-acceptance, but, in the absence of instructions, it can be noted, and a formal protest extended later, if desired.

137. *Presentment for Acceptance of Documentary Bill.*—See Chapter XVIII, p. 254.

138. **Presentment for Payment.**—The general rule, to which there are exceptions, is that a bill must be duly presented for payment; if it is not so presented the drawer and indorsers are discharged (q). The acceptor remains liable on a bill accepted generally even if it be not presented for payment (r), and if, by the terms of a qualified acceptance, presentment for payment is required, the acceptor, in the absence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the due date (s). An example of such a stipulation would arise if the acceptor makes presentation for payment a condition precedent to his liability.

139. *Rules Governing Presentment for Payment.*—The rules governing presentment for payment are as follows: (1) Where the bill is not payable on demand, presentment must be made on the due date (t). (2) Where the bill is payable on demand, presentment must be made within a reasonable time after its issue in order to render the drawer liable, and within a reasonable time after its indorsement in order to render the indorser liable. "Reasonable" time in this connection depends on the nature of the bill, the usage of trade and the facts of the case (u). (3) Presentment must be made by the holder or his authorised agent to the payer or his authorised agent at a reasonable hour on a business day and at the proper place (v). The proper place is the place of payment (if any) specified in the bill; or, if no place of payment is specified, at the drawee's address as given in the bill; or, if no place of payment is specified, and no address is given, at the drawee's place of business, if known, and if not, at his ordinary residence, if known; in any other case the bill may be presented to the drawee or acceptor wherever he can be found, or at his last known place of business or residence (w). (4) Where a bill is presented at the proper place, and no person authorised to pay or refuse payment

(q) Section 45.

(r) Section 52 (1).

(s) Section 52 (2).

(t) Section 45 (1).

(u) Section 45 (2).

(v) Section 45 (3).

(w) Section 45 ( ).

can be found there, no further presentment need be made (x). (5) Where there are two or more acceptors, not partners, and no place of payment is specified, presentment must be made to them all (y); but if one is duly authorised, he may pay or refuse on behalf of himself and the others. (6) Where the acceptor is dead, and no place of payment is specified, presentment must be made to a personal representative, if such there be, and he can be found (z). (7) Where authorised by agreement or usage, presentment through the post office is sufficient (a). (8) When the holder presents a bill for payment, he should exhibit it to the payer, and, on payment, deliver it up to him (b).

140. *When Delay in Presentment for Payment is Excused.*—Delay in presentment is excused when caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate presentment must be made with reasonable diligence (c).

141. *When Presentment for Payment is Dispensed With.*—Presentment is dispensed with (1) where it cannot be effected; (2) where the drawee is fictitious; (3) as regards the drawer when the drawee or acceptor is not bound, as between himself and the drawer, to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented; (4) as regards an indorser, where the bill was accepted or made for his accommodation, and he has no reason to expect that the bill would be paid if presented; (5) where presentment is waived. The fact that the holder has reason to believe that the bill will, on presentment, be dishonoured, does not dispense with the necessity of presentment (d).

142. *Banker Presenting Bill for Payment.*—When a banker presents a bill for payment on behalf of a customer or correspondent, he must bear in mind the rules given in the preceding paragraphs, and all presentments should be made in accordance with those rules. He must, therefore, present the bill to the acceptor for payment on its due date, and at a reasonable hour. Any delay owing to his negligence may render him liable to make good any loss that may ensue. If, however, a bill is drawn payable elsewhere than at the residence or place of business of the drawee, and the banker, through presenting the bill for acceptance, has not time to present the bill for payment on its due date, the delay is excused, and the

(x) Section 45 (5).

(y) Section 45 (6).

(z) Section 45 (7).

(a) Section 45 (8).

(b) Section 52 (4).

(c) Section 46 (1).

(d) Section 46 (2).

drawers and indorsers are not discharged from their liability owing to the delay in presenting the bill for payment.

A bill drawn payable at one place, but accepted payable at another, must be presented for payment at the place where it is accepted payable, and since a bill must be presented for payment on its due date, presentment the day previous is not a good presentment. The fact that an acceptor has accepted a bill without giving value for it, and merely to accommodate the drawer or an indorser, is not sufficient to excuse presentment for payment in due course. And if the banker is informed that the bill will be dishonoured when presented for payment, even if the information is given by the acceptor himself, the bill must nevertheless be duly presented on its due date.

When the services of another banker are necessary in order to present a bill, the bill should, as a rule, be sent to that banker two or three days before maturity, though some bankers do not care to receive bills until the day preceding maturity. When, however, bills are not made payable at a bank, it is better to dispatch them to the collecting banker in sufficient time for him to make inquiries as to any special expenses that may be incurred by him in effecting presentation at a place some distance away.

If a bill is not domiciled at a bank, *i.e.* if it is not made payable at a bank, and it is not paid by the acceptor on presentation, a note should be left with the acceptor, containing full particulars of the bill, stating that it is at the bank awaiting payment, and that the matter requires to be attended to before close of business. The bill itself must not be left at the acceptor's address, as obviously such a proceeding would mean the surrendering to the acceptor of the evidence of his liability. Presentment for payment is quite a different matter from presentment for acceptance. In the latter case, the drawee is entitled to possession of the bill, because, until he accepts it, he is not liable on it.

The acceptor should, strictly speaking, pay his acceptance in legal tender, and the presenting banker should not give up the bill except for cash, unless he has received instructions to the contrary.

If a cheque is offered, it must not be a post-dated one. The bill should not be given up but should be attached to the cheque and surrendered with the cheque on its payment. If the banker were to give up the bill before the cheque is paid, and in exchange for it, all right of recourse against the drawer and indorsers of the bill would be lost, and he would be left with nothing better than the acceptor's dishonoured cheque, and his liability as the drawer of the cheque.

If, when the bill is presented for payment, the acceptor tenders part of the amount in cash, the banker may take it, because it is in aid of all the others who are liable on the bill. The bill must not be surrendered, but should, generally speaking, be noted for the unpaid balance, and notice of dishonour given, the notice clearly showing that the bill was dishonoured by non-payment of part of the amount of the bill. It is usual also to write on the back of the bill a receipt for the money paid. The receipt should state that the payment is a part payment, and should also make it clear that the money has been accepted without prejudice to the rights of other parties liable on the bill, e.g., "Received of —— acceptor of the within written bill, the sum of —— in part payment and without prejudice to the rights of all other parties." If the bill is a foreign bill, it must be protested for the unpaid balance. Part payment discharges a bill *pro tanto*, i.e. so far as the amount paid goes.

**143. Short Bills, or Bills for Collection.**—When bills are handed to a banker by his customer in order that they may be collected when due, and the proceeds credited to the customer's account, they are called "Bills for Collection." This term distinguishes them from "Bills Negotiated," or "Bills Discounted," which are bills for which the banker has given value at once, instead of waiting till he has received the proceeds of the bills when collected. By reason of a practice of entering bills for collection in the pass book in the particulars column with the amounts short of the cash column, they are sometimes called "short bills"—an expression having no reference to the terms for which the bills are drawn. Since these bills are merely handed to the banker for collection and credit of the proceeds, when received, to the customer's account, the banker has no property in them. If, therefore, the banker became bankrupt, his trustee could not claim the bills as part of the banker's assets, and they must be returned to the customer. But, though the banker has no property in the bills, he has a right to retain the bills or their proceeds against any amount due to him by his customer.

When a bill lodged for collection matures after the death of a customer, the banker should credit the proceeds to the executorship account, less any amount for which he has a lien. There is a danger to the banker in the mere collection of bills handed to him by his customer, because if the customer has no title or a defective title to the bills, the banker will be liable to the true owner of the instruments.

for conversion. It is only in the case of crossed cheques that the banker obtains any statutory protection against the rights of third parties.

**144. Bills Discounted.**—These are fully treated later (see pp. 239-42).

**145. Bills Payable at London Office or London Agents.**—Country branches or banks are always willing to make arrangements that their customers' acceptances shall be payable at the London Head Office, or, if the bank has no London Office, at their London Agents. In order that the bills may be met at maturity, the country branch or bank must receive the customer's instructions in time sufficient for an advice to reach London in advance of the dates when the bills are due for payment. If the bills are to be met, the country branch or bank credits London with the amounts of the bills, and enters corresponding debits in the customer's account. The advice form should be so ruled that the essential particulars can be readily seen. If the bill is a documentary bill, particulars of the attached documents of title should be inserted in the advice.

**146. Bills Retired.**—When a bill is withdrawn from circulation or taken up before it is due, it is said to be "retired." Bankers have an invariable rule not to have anything to do with bills domiciled with them unless the bills are domiciled by their customers, or by customers of another bank for which the banker acts as agent. If, therefore, the acceptor of a bill, domiciled not in accordance with the rule referred to, tenders money in order to meet the bill when due, the banker should refuse to take the money and should return the bill unpaid.

When a domiciled bill is retired by the drawer, it is the usual practice to obtain from him a cheque or other authority to debit his account. To retire the bill does not discharge it, and the bill must not, therefore, be cancelled, for, when it falls due, the drawer or any indorser can enforce it against any prior parties. The customer's order to retire his own or another person's acceptances does not require stamping. If a customer has discounted bills with a banker, and while the bills are still current desires to withdraw his credit balance, the banker cannot prevent him doing so, nor can he compel him to retire the bills. Not until the bills fall due and are dishonoured has the banker any right of recourse against the customer. But if a customer, contingently liable to the banker on bills discounted for him, becomes bankrupt, the banker is entitled to retain until maturity and payment sufficient of any credit balance to meet the contingent liability on the bills.

**147. Rebate.**—The term "rebate" is generally applied to the allowance made to an acceptor (or other party liable on the bill)

who retires his acceptance before it is due. This allowance is calculated at an agreed rate on the amount of the bill for the time the bill has still to run. When the bill is given up under rebate it should be indorsed with a discharge such as: "Received payment of the within bill this —— day of —— from —— under rebate at —— per cent. per annum."

The word "Rebate" has also other meanings. When bankers discount bills, it is the practice to credit the discount charged at once to Discount Account (or other subsidiary Profit and Loss Account), but since the discount on a bill is not earned until the bill matures, it follows that at any given date, as at the half-yearly balances, credit will have been taken for discount not yet earned. Accordingly, to counteract this, the amount of unearned discount is calculated and debited to Discount Account, and the amount carried forward to the next half-year. The amount of unearned discount, or, as it is generally called, "Rebate on Bills Discounted," sometimes figures as a separate item on the Liabilities side of a Bank Balance Sheet. In other Bank Balance Sheets this item is shown in the following, or a similar, form: "Current Deposit, and other Accounts, including Rebate on bills not due, and provision for contingencies." In this way the current half-year only receives credit for discount actually earned in the period under review. Any amount of interest or commission refunded to a customer is also called a "Rebate."

**148. Payment of Bill by Banker.**—When a drawee accepts a bill payable elsewhere than at his business or private address, the bill is said to be "domiciled" at the place of payment. Unless a banker has expressly or impliedly agreed to pay bills domiciled with him, he is under no legal obligation to do so, even though the customer has a balance sufficient to meet the bills. But if a bill is presented to a banker bearing an acceptance domiciling the bill with him, he is entitled to pay it, irrespective of the state of the account. Such an acceptance is in itself sufficient authority to justify the banker paying the bill, and charging it to the customer's account. Instead of the normal relationship of debtor and creditor, the relationship between a customer and a banker paying domiciled bills is that of principal and agent. In the provinces, bankers usually require an advice to pay bills domiciled with them, but London bankers generally pay without an advice. If, however, a country banker has been in the habit of paying a customer's bills without advice, he cannot alter his method of procedure without

giving due notice to his customer. Advice forms offer some advantages, but they cannot be taken to guarantee the genuineness of any indorsements on the bill.

When paying domiciled bills many of the considerations to be borne in mind are similar to those arising when paying a cheque—the acceptor of a bill being in a position analogous to that of the drawer of a cheque. The following are the points which the paying banker must consider. That the instrument is in form a bill of exchange; that it is properly stamped; that the acceptor's signature is genuine; that the bill is due; that the bill is in order as regards the words and figures, confirmation of material alterations and the indorsements. Furthermore, the acceptor must not have countermanded payment, or be dead or bankrupt. These and other considerations are dealt with elsewhere.

If the bill is overdue, it does not appear that the banker is bound to pay it, but he would be justified in doing so, particularly if the bill is not long overdue. In such circumstances it is always desirable to get the acceptor's authority before paying the bill. As in the case of cheques, if a customer pays in specially to meet a certain bill, the banker must apply the credit as directed, without regard to the condition of the customer's account.

A bill to which the drawee's signature has been forged is not his bill, and if a banker pays such a bill he cannot debit it to the drawee's account, unless the drawee, by his acts or conduct, is precluded from setting up the forgery. Where the banker has paid to a *bona fide* holder a bill bearing a forged acceptance, the banker cannot compel the *bona fide* holder to return the money if the holder has been in possession long enough to have altered his position, and this is probably so, even though he may not actually have altered his position.

If a person not a customer sends a bill domiciled with a banker to that banker with a request that the proceeds may be remitted to him, the banker should decline to accede to the request, and should return the bill, pointing out to the sender that the bill must be presented in the manner consonant with mercantile custom and usage.

**149. Dishonour of Bill.**—A bill of exchange may be dishonoured by non-acceptance or non-payment. When a bill is duly presented for acceptance and is not accepted within the customary time, the person presenting it must treat it as dishonoured by non-acceptance. If he do not, the holder will lose his right of recourse against the

drawer and indorsers (e). The "customary time" in this connection is considered to be twenty-four hours. A bill is dishonoured by non-acceptance when acceptance is refused or cannot be obtained or when presentment is excused and the bill remains unaccepted (f). On dishonour by non-acceptance an immediate right of recourse against the drawer and indorsers accrues to the holder, provided certain formalities have been complied with. No presentment for payment is necessary (g).

A bill is dishonoured by non-payment when it is duly presented for payment which is refused or cannot be obtained, or when presentment is excused and the bill is overdue and unpaid (h). On dishonour by non-payment an immediate right of recourse against the drawer and indorsers accrues to the holder (i), provided due notice of dishonour has been given, and also against the acceptor, to whom notice need not be sent (j).

An action on a dishonoured bill may be commenced at any time after the expiration of the last day of grace, and within six years from the date when the right to bring an action first accrued. The person to bring the action is the person entitled to receive the money.

Where a bill is dishonoured in this country the holder may recover from any party liable on the bill, and the drawer who has been compelled to pay the bill may recover from the acceptor, and an indorser who has been compelled to pay the bill may recover from the acceptor, drawer or a prior indorser : (1) the amount of the bill ; (2) interest from the time of presentment for payment if the bill is payable on demand, and from the maturity of the bill in any other case ; and (3) the expenses of noting, or of protest if it is necessary (k). Where a bill is dishonoured abroad the sum recoverable is the amount of the re-exchange with interest thereon until the time of payment (l). Re-exchange can only arise when bills are dishonoured in a country different from that in which they were drawn or indorsed, and covers the loss involved by such dishonour. The following illustration will make this clear. Suppose a London banker buys a bill for £100 drawn in London on a merchant in Trinidad and the bill is dishonoured, then the banker is entitled to claim from the drawer such a sum as will realise in Trinidad the amount of the bill at the rate of exchange current in Trinidad at the

(e) Section 42 (1). (f) Section 43 (1). (g) Section 43 (2).

(h) Section 47 (1). (i) Section 47 (2). (j) Section 52 (3).

(k) Section 57 (1, a, b, c). (l) Section 57 (2).

time of its dishonour, plus the usual expenses of protest, stamps, etc. Hence, if the discount in Trinidad for the purchase of sterling bills on London is 1 per cent., the banker is entitled to claim from the drawer £101, plus the usual expenses. That is, the holder of a bill dishonoured abroad is entitled to claim such a sum as will put him in funds in the foreign country as if the bill had been duly paid.

150. **Notice of Dishonour.**—The general rule is that, when a bill has been dishonoured by non-acceptance or non-payment, notice of dishonour must be given to the drawer and each indorser, and any drawer or indorser to whom such notice is not given is discharged (m). Where, however, a bill is dishonoured by non-acceptance, and notice of dishonour is not given, the rights of a holder in due course subsequent to the omission are not prejudiced by the omission (n). Further, if a bill is dishonoured by non-acceptance and due notice of dishonour is given, it is not necessary to give notice of a subsequent dishonour by non-payment unless in the meantime the bill has been accepted (o).

151. *Persons Authorised to Serve Notice.*—Notice must be given by or on behalf of the holder or by or on behalf of an indorser who, at the time of giving it, is himself liable on the bill (p). Hence it cannot be given by an indorser if such party has been discharged for want of punctual notice. Notice may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not (q). *Effect.*—Notice given by the holder, or on his behalf, enures for the benefit of subsequent holders and all prior indorsers who have a right of recourse against the party to whom it is given (r). Notice given by or on behalf of an indorser enures for the benefit of the holder, and all indorsers subsequent to the party to whom notice is given (s). “Enures” here means “takes effect.”

152. *To whom Notice must be given.*—As stated, notice must be given to the drawer and each indorser. Instead of giving it to the party himself, it may be given to his agent in that matter (t). A notice left at the drawer's or indorser's shop or office will suffice. Where the person giving notice knows that the drawer or indorser is dead, notice must be given to a personal representative, if there be one and he can be found (u). If the party entitled to receive notice is bankrupt, notice may be given either to the party him-

(m) Section 48. (n) Section 48 (1). (o) Section 48 (2).  
 (p) Section 49 (1). (q) Section 49 (2). (r) Section 49 (3).  
 (s) Section 49 (4). (t) Section 49 (8). (u) Section 49 (9).

self or to the trustee (v). Where there are two or more drawers or indorsers, not partners, notice must be given to each, unless one has authority to receive notice for the others (w). Where a bill when dishonoured is in the hands of an agent he may either give notice to the parties liable on the bill or give notice to his principal (x).

In the case of branches of a bank, each branch in giving notice of dishonour is considered as an independent holder, and therefore entitled, within the usual time, to receive notice from and to transmit notice to the other branches of the same bank.

It has been stated above that any party to a dishonoured bill who does not receive due notice of dishonour is discharged from his liability. The holder, therefore, of a dishonoured bill should, for his own protection, himself send a notice to all parties liable on the instrument. If he does not do so, then his right to sue any party other than his own indorser (to whom he would naturally give notice) and the acceptor, would depend upon the promptness with which the party to whom he gives notice sends on the notice to the party from whom he, in turn, received the bill. And this second party must, in like manner, promptly transmit the notice to his transferor, and so on. If the holder himself gives notice to the drawer and all indorsers, he avoids all risk of loss that might be incurred through the negligence of the other parties.

Another point of importance is that the notice must be given by a party who is himself liable on the bill. Hence, prompt notice by the holder to his transferor A makes A liable, and he, in his turn, by giving prompt notice to his transferor B can make B liable. But if A so delays in giving notice to B as to make his notice ineffectual, then B, being no longer liable on the bill, cannot give an effectual notice to his transferor C.

153. *Form of Notice.*—Notice may be written or verbal, or partly written and partly verbal, and may be given in any terms which sufficiently identify the bill and convey the fact of its dishonour (y). The return of the bill itself is a sufficient notice (z), but, of course, a holder would not usually adopt this method. A written notice need not be signed (a), and need not state on whose behalf it was given. A misdescription of the bill does not vitiate the notice unless the party to whom notice is given is misled thereby (b). Where notice of dishonour is duly addressed and posted the sender is deemed to have given due notice, notwithstanding any miscarriage

(v) Section 49 (10).

(w) Section 49 (11).

(x) Section 49 (13).

(y) Section 49 (5 and 7).

(z) Section 49 (6).

(a) and (b) Section 49 (7).

by the post office (c). Notice by telegram or telephone is probably good; the latter would appear to be included in the category of personal or verbal communications (d).

A suitable form of notice is as follows—

To..... ..... Dear Sir,	Address, Date.	
I hereby give you notice that the undermentioned bill upon which you are liable as drawer ( <i>or indorser</i> ) has been dishonoured by non-payment ( <i>or non-acceptance</i> ). I have to request immediate payment of the amount of the said bill £....., together with expenses....., total £.....		
Yours faithfully, ..... Manager.		
Amount £.....		
Date .....	Tenor .....	Due .....
Drawer .....		
Acceptor .....		
Indorsers .....		
Payable at .....		
Answer given .....		

**154. Time for Giving Notice.**—Notice may be given as soon as the bill is dishonoured, and must be given within a reasonable time thereafter (e). If the person giving and the person to receive notice reside in the same place, notice to be effectual must reach the latter on the day after dishonour. Where they reside in different places, notice must be sent off not later than the day after dishonour, if there be a post at a convenient hour on that day, and if not, by the next post thereafter (f). Where a party to a bill receives notice he has himself the same period of time for giving notice that the holder has after dishonour (g). An agent giving notice to his principal must do so within the same time as if he were the holder, and the principal upon receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder (h). Delay in giving notice is excused where caused by circumstances beyond the control of the party giving

(c) Section 49 (15).

(d) Section 49 (5 and 7).

(e) and (f) Section 49 (12).

(g) Section 49 (14).

(h) Section 49 (13).

notice, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate the notice must be given with reasonable diligence (*i*).

155. *When Notice is dispensed with*.—Notice of dishonour is dispensed with : (1) When, after the exercise of reasonable diligence, notice cannot be given to or does not reach the party sought to be charged. (2) Where notice is waived. (3) As regards the drawer : (i) where drawer and drawee are the same person ; (ii) where the drawee is a fictitious person or a person without capacity to contract ; (iii) where the drawer is the person to whom the bill is presented for payment ; (iv) where the drawee or acceptor is, as between himself and the drawer, under no obligation to accept or pay the bill ; (v) where the drawer has countermanded payment. (4) As regards an indorser : (i) where the drawee is a fictitious person or a person without capacity to contract and the indorser was aware of the fact at the time he indorsed the bill ; (ii) where the indorser is the person to whom the bill is presented for payment ; (iii) where the bill was accepted or made for his accommodation (*j*).

156. *Banker Giving Notice*.—If a bill, which a banker has discounted for a customer, is returned unpaid, he will debit it to his customer's account, returning the dishonoured bill to him. If, however, the customer's balance is insufficient, and the banker does not wish to allow him an overdraft, the banker can hold the bill, and give notice of dishonour at once to his customer and all parties liable on the bill. The banker is entitled to retain the customer's balance, and, pending settlement, should debit the bill to a suspense account and keep possession of the bill until it is paid.

Where the bill is paid in for collection, the banker is the customer's agent, and as such must give due notice of dishonour to the customer, and will be responsible for any loss occasioned by his neglect to do so. An agent may either give notice to all parties liable on the bill, or he may give notice only to his principal. The method adopted by a banker in practice is the safer and better course of giving notice to the principal, his customer. As a matter of fact, this method is not only safer and better, but is also less expensive and troublesome, and in most cases, indeed, the only practicable method, since the addresses of the other parties are not generally known to the banker. If the banker adopted the former

course, he would be responsible for any loss that might ensue to the customer through the banker's failure to transmit effectual notice to all of the parties liable on the bill. If a banker holds a bill as security and it is not paid on presentation, he must give due notice of dishonour.

**157. Noting and Protest (k).**—A bill is noted in order to secure official evidence that it has been dishonoured. When a bill is to be noted, the notary public, to whom the dishonoured bill is taken, re-presents it for acceptance or payment, whichever is required, and if the drawee or acceptor still refuses to accept or pay the bill (as the case may be) the bill is noted.

The noting is a minute made on a dishonoured bill or on a slip of paper affixed to the bill, by a notary public. The minute contains the date of presentment, the notary's charges, a reference to the notary's register, and his initials. A slip of paper is also attached to the bill stating the substance of the answer given to the notary's clerk when he presented the bill, *e.g.*, "No effects," "No advice."

This noting is sometimes followed by a formal document bearing the notarial seal, and attesting the fact that the bill has been dishonoured. This document is called a "protest," and is accepted as evidence in the Courts of every civilised country that the bill has been dishonoured. The law requires a protest to contain a copy of the bill, the notary's signature, the name of the person for whom the bill is protested, the place and date of protest, the cause or reason for protesting, the demand made and the answer given (if any), or the fact that the drawee or acceptor could not be found (*l*). Where a bill is lost or destroyed, or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof (*m*).

#### PROTEST OF A BILL FOR NON-ACCEPTANCE.

On this the ..... day of ....., One thousand nine hundred and ..... at the request of A. B., of the City of London, merchant, and holder of the original bill of exchange, a true copy of which is on the other side written (*or is underwritten*), I, R. D., of the said City, Notary Public, by royal (*or lawful*) authority duly admitted and sworn, did produce and exhibit the said original bill of exchange to C. D. on whom it was drawn, at (*his address*) for his acceptance, and demanded acceptance thereof, to which he replied that it would not be accepted at present (*or the answer given*). Wherefore I, the said Notary,

(*k*) **NOTE.**—The specimen forms in this Article are taken from Brooke's *Notary*.

(*l*) Section 51 (7).

(*m*) Section 51 (8).

at the request aforesaid did protest, and by these presents do solemnly protest against the drawer of the said bill of exchange and all other parties thereto, and all others whom it doth or may concern, for exchange, re-exchange, and all costs, damages, charges and interest already incurred and to be hereafter incurred by reason of the non-acceptance of the said bill of exchange. Thus done and protested at ..... in the presence of E. F. and G. H., witnesses.

Dated this ..... day of ..... One thousand nine hundred and ....

Which I attest

(Seal) R. D.

Notary Public, r .....

#### PROTEST OF A BILL ON NON-PAYMENT.

On this the ..... day of (*continue as in other form*) did produce and exhibit the said bill to E. F., on whom the said bill was drawn (*and by whom the same was accepted, if the bill has been accepted*) at his office situate at, etc., and demand payment thereof, and he answered that it would not be paid.

Whereupon I, the said Notary, at the request aforesaid, did protest and by these presents do protest against the drawer of the said bill, and all other parties thereto, and all others concerned, for exchange, re-exchange and all costs, charges, damages and interest, present and to come (*or future*) for want of payment of the said bill.

Thus done, etc.,

Which I attest,

(Seal) R. D.

Notary Public.

Where a foreign bill has been dishonoured by non-acceptance it must be duly protested for non-acceptance, and where such a bill, which has not been previously dishonoured by non-acceptance, is dishonoured by non-payment, it must be duly protested for non-payment; if this formality is omitted, the drawer and indorsers will be discharged from all liability on the bill (*n*), but the acceptor remains liable (*o*). If a foreign bill has been accepted as to part it must be protested as to the balance (*p*). A foreign promissory note which has been dishonoured does not require to be protested (*q*), but, in practice, it may be desirable to protest a note bearing a foreign indorsement in order to facilitate any action against the foreign party. A bill which has been protested for non-acceptance may be subsequently protested for non-payment (*r*).

Where an inland bill has been dishonoured by non-acceptance or non-payment it may, if the holder thinks fit, be noted, and if the bill is for a large amount, or if legal proceedings are likely, or if there are several indorsers, it may be desirable for the holder to have an inland bill noted or protested, but such a course is not legally necessary in order to preserve recourse against the drawer

(*n*) Section 51 (2).

(*o*) Section 52 (3).

(*p*) Section 44 (2).

(*q*) Section 89 (4)

(*r*) Section 51 (3).

and indorsers (s). If, however, an inland bill is to be accepted for honour or paid for honour, protest for non-acceptance or non-payment, as the case may be, is a necessary preliminary (t).

When a bill is noted or protested it *may* be noted on the day of its dishonour, and *must* be noted not later than the next succeeding day. This is provided for by the Bills of Exchange (Time of Noting) Act, 1917. As, however, s. 45 (1) of the Bills of Exchange Act states that a bill not payable on demand must be presented on the day it falls due, a notary, when noting such a bill, should do so on the day of maturity, in order that he can testify that the bill was duly presented on the day it fell due. If a bill has been duly noted the protest may be extended subsequently as of the date of the noting (u). The place of dishonour is the place in which to protest a bill ; but (1) a bill presented by post, and returned by post dishonoured, may be protested at the place to which it is returned, and on the day of its return, if received during business hours, and if not so received, then not later than the next business day ; (2) if a bill, drawn payable at the business place or residence of some person other than the drawee, is dishonoured by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary (v).

Where a bill or note is required to be protested within a specified time, or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding ; and the formal protest may be extended at any time thereafter as of the date of the noting (w).

Protest is dispensed with by any circumstances which would dispense with notice of dishonour. Delay in noting or protesting is excused when caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate the bill must be noted or protested with reasonable diligence (x).

158. *Protest for Better Security*.—On the bankruptcy of the acceptor during the currency of a bill, the holder may cause it to be protested for better security against the drawer and indorsers (y).

(s) Section 51 (1).

(t) Sections 65 (1) and 68 (1). See Acceptance for Honour and Payment for Honour post. (u) Section 51 (4). (v) Section 51 (6).

(w) Section 93. (x) Section 51 (9).

(y) Section 51 (5).

This must not be taken to imply that the holder, on the acceptor's bankruptcy, can demand further security from the drawer and indorsers that the bill will be met at maturity, though under some foreign codes a protest in such circumstances will enable the holder to do this. The only effect so far as the law of this country is concerned is that anyone who desires to accept the bill for honour, may do so as if it had been protested for dishonour by non-acceptance.

159. *Householder's Protest*.—Where a dishonoured bill or note has to be protested, and no notary is available at the place of dishonour, any householder or substantial resident may, in the presence of two witnesses, give a certificate, signed by them, attesting the dishonour of the bill, and the certificate will operate as if it were a formal protest of the bill (2). The following form, which is given in the first schedule to the Bills of Exchange Act, may be used for this purpose—

Know all men that I, A. B. [householder] of ..... in the county of ..... in the United Kingdom, at the request of C. D., there being no notary public available, did on the ..... day of ..... at ..... demand payment (or acceptance) of the bill of exchange hereunder written, from E. F., to which demand he made answer (*state answer, if any*) wherefore I now, in the presence of G. H. and J. K., do protest the said bill of exchange.

(Signed) A. B.,  
G. H. } Witnesses.  
J. K. }

The bill itself should be annexed, or a copy of the bill, and all that is written thereon, should be underwritten.

160. *Collecting Banker's Duty as to Noting and Protesting*.—When a banker presents a bill which he has received for collection and it is dishonoured, he must carry out his customer's instructions as to noting and protesting, and he will be liable if he neglects to do so. In the absence of instructions to the contrary, a banker would not usually note a dishonoured inland bill, but if the bill is a foreign bill, the banker must protest it, unless he has received precise instructions from his customer or correspondent not to do so. If a notary public is not available a householder's protest must be drawn up. The banker, however, may content himself with noting the foreign bill, pending further instructions as to the formal protest. He is justified in doing this, because, as already stated, if the bill is duly noted, the formal protest may be

(2) Section 94.

extended any time thereafter as of the date of noting. It is the custom of some country banks to send bills for noting to the notary a short time before the close of business, but in London the practice is to send them after closing time. This gives an opportunity for the bill to be taken up at the presenting bank right up to the close of business. It is the practice, in some cases, to mark inland bills "N/N," which means "Not to be noted."

161. *Stamp on Protest*.—Protests are subject to stamp duty. Where the stamp duty on the dishonoured bill or note does not exceed one shilling, the protest requires a stamp of the same amount as on the bill or note. In any other case, the stamp is one shilling. The stamp may be an adhesive one, which must be cancelled by the notary (Stamp Act, 1891, s. 90 and sched.). An impressed stamp may also be used. The stamp duty on any notarial act other than a protest is one shilling. There is no stamp duty required in connection with noting.

162. **Effect of Statute of Limitations on Bills**.—The statute begins to run from the time the right of action first accrued, and no action can be maintained unless it be brought within six years from that time. The barring of a holder's right of action bars also his transferee's right of action. Normally, the time begins to run in the acceptor's favour from the due date of the bill, unless by the terms of the acceptance, presentment to the acceptor for payment is requisite, in which case it would appear that the time runs from the date of presentment. If the bill is accepted after its due date, it is considered that the time would run from the date of acceptance (Chalmers's *Bills of Exchange*, 8th edition, p. 337). If the bill is payable on demand, the time begins to run in the acceptor's favour from the date of issue (presumably the date of the bill) and not from the date of demand or dishonour. So far as regards the drawer and indorsers, the statute, generally speaking, begins to run from the time when notice of dishonour was first received.

A bill may be taken out of the Statute by an acknowledgment in writing of the debt, signed by the party to be charged, or by his authorised agent, or by a payment by that party on account of interest or principal.

163. **Discharge of Bill**.—Complete discharge of a bill is effected only when all the rights of action upon the instrument are extinguished. Payment, merger, waiver, cancellation and alteration are the grounds of discharge.

*Payment*.—A bill is discharged by payment in due course by,

or on behalf of, the drawee or acceptor. "Payment in due course" means payment made at, or after, the maturity of the bill to the holder thereof in good faith and without notice that his title to the bill is defective (a). Payment to a person who takes through or under a forged indorsement is not payment to the holder, and will not operate as a discharge, but a banker who pays in good faith and in the ordinary course of business to a person claiming through a forged indorsement a cheque drawn upon himself is protected (b).

Payment must be in legal tender money, unless the holder agrees to accept some other form of payment. The exact sum must be tendered, but a part payment will discharge the bill *pro tanto*. If the holder takes the acceptor's cheque in exchange for the bill, the holder will lose his rights against the drawer and indorsers of the bill, and if the cheque is dishonoured his only remedy is against the acceptor as drawer of the cheque. Payment by the drawer or indorser of a bill does not, generally speaking, operate as a discharge (c), but if an accommodation bill is paid in due course by the party accommodated it is discharged (d), for such party is the person primarily liable. If a bill payable to a third party is paid by the drawer, the drawer may enforce payment of the bill against the acceptor, but he cannot re-issue the bill (e). Where a bill is paid by an indorser, or where a bill payable to drawer's order is paid by the drawer, the payer is remitted to his former rights as regards the acceptor or antecedent parties, and he may, if he thinks fit, strike out his own and subsequent indorsements, and again negotiate the bill (f).

*Merger*.—An example of discharge by merger is where the acceptor becomes the holder of a bill at or after maturity in his own right.

*Waiver*.—When the holder of a bill at or after its maturity absolutely and unconditionally renounces his rights against the acceptor the bill is discharged. The renunciation must be in writing unless the bill is delivered up to the acceptor (g). The liabilities of any party to a bill may in like manner be renounced by the holder before, at, or after its maturity, but the rights of a holder in due course without notice of the renunciation are not affected by it (h).

*Cancellation*.—Where a bill is intentionally cancelled by the holder or his agent, and the cancellation is apparent thereon, the

(a) Section 59 (1).

(b) Section 60.

(c) Section 59 (2).

(d) Section 59 (3).

(e) Section 59 (2, a).

(f) Section 59 (2, b).

(g) Section 62 (1).

(h) Section 62 (2).

bill is discharged (i). In like manner any party liable on a bill may be discharged by the intentional cancellation of his signature by the holder or his agent. In such case any indorser who would have had a right of recourse against the party whose signature is cancelled is also discharged (j). An unintentional, mistaken or unauthorised cancellation is inoperative, but the burden of proof lies on the party who alleges that the cancellation was unintentional, mistaken or unauthorised (k). It sometimes happens that a banker wishes to return a bill which he has cancelled, in which case he marks it "Cancelled in error," and adds his initials, and provided the bill bears no foreign indorsements, his mistake in cancelling the bill is rectified. If, however, there is a foreign indorsement, difficulty may arise, as in some foreign countries no recourse is possible against a party whose signature has been cancelled, even though the cancellation was done in error. Accordingly, it is possible that the holder or remitting banker in such a case may be justified in refusing to accept the returned bill, or in demanding an indemnity.

*Discharge by Alteration*, see p. 120.

**164. Acceptance for Honour.**—Where a bill has been protested for dishonour by non-acceptance, or protested for better security and is not overdue, any person *not already liable on the bill* may, with the holder's consent, accept the bill supra protest for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn (l). Such an acceptance must be written on the bill, and indicate that it is an acceptance for honour, and be signed by the acceptor for honour (m). If it does not expressly state for whose honour it is made it is deemed to be an acceptance for the honour of the drawer (n). An acceptance for honour may be for part only of the sum for which it is drawn (o). The following are examples of such acceptances—

(i) Accepted supra protest,

WILLIAM BROWN.

(ii) Accepted S.P.,

WILLIAM BROWN.

(iii) Accepted supra protest for the honour of John Robinson,

WILLIAM BROWN.

(iv) Accepted supra protest for the honour of John Robinson, with notarial charges ....., total £.....

WILLIAM BROWN.

(i) Section 63 (1).

(j) Section 63 (2).

(k) Section 63 (3).

(l) Section 65 (1).

(m) Section 65 (3).

(n) Section 65 (4).

(o) Section 65 (2).

The expression "supra protest" means "after protest."

The acceptor for honour of a bill undertakes to pay it on due presentment, if it is not paid by the drawee, provided it has been duly presented for payment, and protested for non-payment, and that he receives notice of these facts (p). The acceptor for honour is liable to the holder and to all parties subsequent to the party for whose honour he has accepted (q).

A dishonoured bill which has been accepted for honour supra protest must be protested for non-payment before it is presented for payment to the acceptor for honour (r). Thus the holder of a bill which is to be accepted for honour must first present it to the drawee and protest it for dishonour by non-acceptance. Having secured the acceptance for honour, he must again present the bill to the drawee on the due date, and protest it for non-payment. This second presentation is made because "effects often reach the drawee, who has refused acceptance in the first instance, out of which the bill may and would be satisfied if presented to him again when the period of payment had arrived."

Where the address of the acceptor for honour is in the same place where the bill is protested for non-payment, the bill must be presented to him not later than the day following its maturity; and where the address is not in that place, the bill must be forwarded not later than the day following its maturity for presentment to him (s). Delay in presentment or non-presentment is excused by any circumstance which would excuse delay in presentment for payment or non-presentment for payment (t). If a bill is dishonoured by the acceptor for honour it must be protested for non-payment by him (u). This is a case where protest is equally necessary, whether the bill be an inland or a foreign bill.

As to the maturity of a bill payable after sight which is accepted for honour, see p. 119.

**165. Payment for Honour.**—Payments for honour are not frequent in practice, and their intention is chiefly to preserve the credit of the persons for whom they are made.

Where a bill has been protested for non-payment, any person may pay it supra protest for the honour of any party liable theron, or for the honour of the person for whose account the bill is drawn (v). Such a payment must be attested by a notarial act

(p) Section 66 (1).

(q) Section 66 (2).

(r) Section 67 (1).

(s) Section 67 (2).

(t) Section 67 (3).

(u) Section 67 (4).

(v) Section 68 (1).

of honour which may be appended to the protest or form an extension of it (*w*). The notarial act of honour must be founded on a declaration made by the payer for honour, or his agent in that matter, declaring his intention to pay the bill for honour, and for whose honour he pays (*x*). The following is an example:—

Act of Honour on Payment (to be written at the foot of the Protest).

Afterwards on the .... day of ...., in the year aforesaid before me the said notary and witnesses appeared Messrs. A. B. and Co., of London, merchants, and declared that they would pay the bill of exchange before protested under protest for the honour and upon the account of the C. D. Bank, Berlin, the second indorsers on the said bill.

Holding, nevertheless, the said second indorsers and all others concerned always bound and obliged for reimbursement in due form of law and according to the custom of merchants.

Principal	£100 : 0 : 0	Which I attest,
Notarial Charges	13 : 0	E. F., Notary Public
—————		
	£100 : 13 : 0	

Received the .... day of ...., 19 , from Messrs. A. B. and Co., the sum of One Hundred pounds, thirteen shillings sterling, the amount of the said bill and notarial charges thereon.

Where two or more persons offer to pay a bill for the honour of different parties, the person whose payment will discharge most parties to the bill has the preference (*y*). Where a bill has been paid for honour all parties subsequent to the party for whose honour it is paid are discharged, but the payer for honour succeeds to the rights and duties of the holder as regards the party for whose honour he pays and all parties liable to that party (*z*). The payer for honour is entitled to receive the bill and the protest on paying to the holder the amount of the bill and the notarial expenses (*a*). If the holder of a bill refuses to receive payment supra protest he loses his right of recourse against any party who would have been discharged by such payment (*b*).

**166. Lost Bills.**—If a bill is lost before it is overdue the person who was the holder of it can compel the drawer to give him another bill of the same tenor on indemnifying the latter against all persons in case the bill is subsequently found (*c*). In any action on a bill, the Court may order that the loss of the instrument shall not be set up provided a satisfactory indemnity be given (*d*). (See also *Lost Cheques*, p. 40.)

(*w*) Section 68 (3).

(*x*) Section 68 (4).

(*y*) Section 68 (2).

(*z*) Section 68 (5).

(*a*) Section 68 (6).

(*b*) Section 68 (7).

(*c*) Section 69.

(*d*) Section 70.

**167. Bills in a Set.**—A bill in a set is a bill of exchange that is drawn in two or three parts, each part being on a separate piece of paper. Each part must be worded exactly the same as the other parts, except that the parts are called respectively, the "First of Exchange," "Second of Exchange," and "Third of Exchange," and are so referred to in each of the other parts. Inland bills—that is, bills drawn by one person on another, both of whom are resident in this country—are not drawn in sets. Bills are drawn in sets by foreign traders on persons in this country, and vice versa, and are so drawn to minimise the risk of loss in transmission from one country to another. Bankers usually issue drafts on foreign countries in two parts, one being marked "Original" and the other "Duplicate."

When a bill is drawn in two or three parts, the first part is often sent to a banker, or correspondent, in the country drawn on, in order that he may present the bill to the drawee for acceptance. After acceptance has been obtained, the correspondent retains the first part until it is claimed by the holder of the other part or parts. In order that such holder shall know to whom to apply for the "First of Exchange," a reference, "First with Messrs. A. B. & Co.," is written on the remaining part or parts. On seeing this statement, the holder knows that A. B. & Co. hold the first and accepted part, and all he has to do to secure possession of it is to produce the remaining part or parts. All parts are then together and the whole constitutes one bill (e). By sending the first part forward in this manner the advantage of earlier acceptance is obtained. Only one part of a set has to be stamped.

#### SPECIMEN FORM OF A BILL IN A SET HAVING THREE PARTS.

First Part—

Stamp.	703, <i>Commercial Buildings,</i> <i>London,</i> <i>10th June, 1930.</i>
£100.	

Sixty days after sight pay this First of Exchange (Second and Third of the same date and tenor being unpaid) to the order of F. Jaasma and Co. the sum of One Hundred pounds, value received.

JAMES NORTON.

To Fritz Evers,  
Amsterdam.

## Second Part.

Stamp.

£100.

Sixty days after sight pay this Second of Exchange (First and Third of the same date and tenor being unpaid) to the order of F. Jaasma and Co. the sum of One Hundred pounds, value received.

703, *Commercial Buildings,*  
*London,*

10th June, 1930.

JAMES NORTON.

To Fritz Evers,  
Amsterdam.

## Third Part.

Stamp.

£100.

Sixty days after sight pay this Third of Exchange (First and Second of the same date and tenor being unpaid) to the order of F. Jaasma and Co. the sum of One Hundred pounds, value received.

703, *Commercial Buildings,*  
*London,*

10th June, 1930.

JAMES NORTON.

To Fritz Evers,  
Amsterdam.

168. *Statute Law Governing Bills in a Set.*—Where a bill is drawn in a set, each part of the set being numbered, and containing a reference to the other parts, the whole of the parts constitute one bill (f). Where the holder of a set indorses two or more parts to different persons he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed as if the said parts were separate bills (g). Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is, as between such holders, deemed the true owner of the bill; but this does not affect the rights of a person who in due course accepts or pays the part first presented to him (h). The acceptance may be written on any part, and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts get into the hands of different holders in due course, he is liable on every such part as if it were a separate bill (i). When the acceptor of a bill drawn in a set

(f) Section 71 (1).

(h) Section 71 (3).

(g) Section 71 (2).

(i) Section 71 (4).

pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereof (j). Subject to the preceding rules, where any one part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged (k).

**169. Conflict of Laws.**—Where a bill, drawn in one country, is negotiated, accepted, or payable in another country, difficulties may arise as to which country's statutes and regulations are to decide the matter. In the general way, the maxim "locus regit actum," which means "the place governs the act," decides the matter. There are some exceptions, but this is the general rule followed when determining the rights, duties, and liabilities of the parties. Thus the validity of a bill as regards its form is determined by the law of the place of issue, and the validity as regards requisites in form of the supervening contracts, such as acceptance, or indorsement, or acceptance supra protest, is determined by the law of the place where such contract was made (l). But a bill issued out of the United Kingdom is not invalid in the United Kingdom because it is not stamped in accordance with the law of the place of issue (m), and if a bill conforms, as regards requisites in form, to the law of the United Kingdom, it may, for the purpose of enforcing payment, be treated as valid as between all persons who negotiate, hold or become parties to it in the United Kingdom (n). The interpretation of the drawing, indorsement, acceptance or acceptance supra protest of a bill is determined by the law of the place where such contract is made, but where an inland bill is indorsed in a foreign country the indorsement, as regards the payer, is interpreted according to the law of the United Kingdom (o). The duties of the holder with respect to presentment for acceptance or payment and the necessity for or sufficiency of a protest or notice of dishonour or otherwise are determined by the law of the place where the act is done or the bill is dishonoured (p).

(j) Section 71 (5).

(k) Section 71 (6).

(l) Section 72 (1).

(m) Section 72 (1, a).

(n) Section 72 (1, b).

(o) Section 72 (2).

(p) Section 72 (3).

## CHAPTER X

### PROMISSORY NOTES

170. **Definition, etc.**—A promissory note is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money to, or to the order of, a specified person, or to bearer (a). An instrument in the form of a note payable to maker's order is not a note until it is indorsed by the maker (b). A note may contain a pledge of collateral security with authority to sell or dispose thereof (c). An instrument in the form of a promissory note contained the following clause and was held to be a valid promissory note within the meaning of the Bills of Exchange Act "that no time given to, or security taken from, or composition or arrangement entered into with either party shall prejudice the rights of the holder to proceed against any other party." (*Kirkwood v. Carroll*, 1903.) It was also held that the sum secured by a promissory note can be made payable by stated instalments.

Hence, no precise form is necessary to constitute a promissory note, but there must be a definite, unconditional *promise* in writing to pay a sum certain in money, and, as in the case of a bill of exchange, the note must not be payable on a contingency. Thus, an instrument reading "On A's marriage to B, I promise to pay A ten pounds" would not be a promissory note, and the happening of the event does not cure the defect.

A promissory note is incomplete until delivery thereof to the payee or bearer (d). The maker of a promissory note undertakes to pay it according to its tenor (e). He is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse (f).

(a) Section 83 (1).	(b) Section 83 (2).	(c) Section 83 (3).
(d) Section 84.	(e) Section 88 (1).	(f) Section 88 (2).

A promissory note which is, or on the face of it purports to be, both made and payable within the British Islands is an inland note. Any other note is a foreign note (g).

### 171. Specimen Forms.

#### PROMISSORY NOTE PAYABLE ON DEMAND.

Stamp.

£10.

*London,*

*5th May, 1930.*

On demand I promise to pay at the British Bank Ltd., Lombard St., to John Brown or order the sum of Ten pounds, value received.

JAMES ROBINSON.

#### PROMISSORY NOTE PAYABLE AFTER DATE WITH INTEREST.

Stamp.

£50.

*London,*

*5th May, 1930.*

One month after date I promise to pay to John Brown or to his order the sum of Fifty pounds with interest at the rate of five per cent. per annum until payment.

JAMES ROBINSON.

In the above notes, James Robinson is the maker or promisor, while John Brown is the payee or promisee.

**172. Joint and Joint and Several Promissory Notes.**—A promissory note may be made by two or more makers, and they may be liable thereon jointly, or jointly and severally, according to its tenor (h). Where a note runs "I promise to pay" and is signed by two or more persons it is deemed to be their joint and several note (i).

#### JOINT PROMISSORY NOTE.

Stamp.

£20.

*London,*

*5th May, 1930.*

On demand we promise to pay to John Brown or order the sum of Twenty pounds.

Payable at the British Bank Ltd.,  
Lombard St., E.C.

JAMES ROBINSON.  
THOMAS SMITH.

(g) Section 83 (4).

(h) Section 85 (1).

(i) Section 85 (2).

## JOINT AND SEVERAL PROMISSORY NOTE.

Stamp.

£100.

One month after date we jointly and severally promise to pay (or I promise to pay) to John Brown or order One Hundred pounds.

London,  
5th May, 1930.

JAMES ROBINSON.  
THOMAS SMITH.

A joint liability is not individual but collective; it is the liability of all together. Hence, a *joint* note is good against all the makers jointly. A joint and several liability, on the other hand, is the liability of all together and of each one separately. A *joint and several* note made by two or more makers is good against them all jointly, or against each one separately, for the full amount of the note. If one of the makers of a *joint* note dies or becomes bankrupt, his estate is freed from all liability, and the maker must look to the remaining party or parties for the whole amount, but death or bankruptcy does not release the estate of a party to a joint and several note. If a joint note is sued upon, *all* parties must be sued together, as any party not included will be released from liability and judgment against one or some, whether satisfied or not, will release the other or others. In a joint and several note, the holder can sue the parties as he pleases, and the remedy against them is not satisfied until 20s. in the £ has been recovered.

**173. Presentment for Payment.**—Where a note payable on demand has been indorsed, it must be presented for payment within a reasonable time of the indorsement. Failure to do so discharges the indorser (*j*). In determining what is a reasonable time regard is had to the nature of the instrument, the usage of trade and the facts of the case (*k*). Where a note payable on demand is negotiated it is not deemed to be overdue, for the purpose of affecting the holder with defects of title of which he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue (*l*).

Where a promissory note is in the body of it made payable at a particular place, such as "On demand I promise to pay John Smith or Order at the Specie Bank Ltd., Northtown, the sum of, etc.," it must be presented for payment at that place to render the

(*j*) Section 86 (1).

(*k*) Section 86 (2).

(*l*) Section 86 (3).

maker liable. In any other case presentment for payment is not necessary in order to render the maker liable (*m*). Presentment for payment is necessary in order to render the indorser of a note liable (*n*). Where a note is in the body of it made payable at a particular place, presentment at that place is necessary in order to render an indorser liable ; but when a place of payment is indicated by way of memorandum only, presentment at that place is sufficient to render the indorser liable ; but a presentment to the maker elsewhere, if sufficient in other respects, also suffices (*o*).

**174. Promissory Note made Payable at a Bank.**—As in the case of a bill of exchange, the fact that a promissory note has been made payable at a bank justifies the banker in paying it when due and debiting it to the maker's account, but the banker will be liable in the event of a forged indorsement on the note.

**175. Application of Provisions of Bills of Exchange Act to Promissory Notes.**—With the necessary modifications, and subject to certain exceptions, the provisions of the Bills of Exchange Act relating to bills of exchange apply to promissory notes (*p*). In applying these provisions the maker of a note corresponds with the acceptor of a bill, and the first indorser of a note corresponds with the drawer of an accepted bill payable to drawer's order (*q*). The provisions relating to presentment for acceptance, acceptance, acceptance supra protest and bills in a set do not apply to notes (*r*).

Bank notes, which are promissory notes issued by a banker and payable to bearer on demand, are dealt with on p. 179.

(*m*) Section 87 (1).      (*n*) Section 87 (2).      (*o*) Section 87 (3).  
(*p*) Section 89 (1).      (*q*) Section 89 (2).      (*r*) Section 89 (3).

## CHAPTER XI

### STAMP DUTIES

**176. Definitions of Bill and Note for Stamping Purposes.**—For stamping purposes the expression “ bill of exchange ” has a much wider meaning than that assigned to it in the Bills of Exchange Act, and includes any draft, order, cheque, letter of credit (but see Exemption 4 below), and any document or writing (except a bank note) entitling or purporting to entitle any person, whether named therein or not, to payment by any other person of, or to draw upon any other person for, any sum of money ; and the expression “ bill of exchange payable on demand ” includes : (1) an order for the payment of any sum of money by a bill of exchange or promissory note, or for the delivery of any bill of exchange or promissory note in satisfaction of any sum of money, or for the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen ; and (2) an order for the payment of any sum of money weekly, monthly, or at any other stated periods, and also an order for the payment by any person at any time after the date thereof of any sum of money, and sent or delivered by the person making the same to the person by whom the payment is to be made, and not to the person to whom the payment is to be made, or to any person on his behalf (a).

For stamping purposes the expression “ promissory note ” includes any document or writing (except a bank note) containing a promise to pay any sum of money (b). A note promising the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen is to be deemed a promissory note for that sum of money (c).

(a) Stamp Act, 1891, Section 32.  
(c) Stamp Act, 1891, Section 33 (2).

(b) Stamp Act, 1891, Section 33 (1).

177. **Scale of Duties.**—The stamp duties on bills and notes are calculated according to the following scale, which is given in the schedule to the Stamp Act, 1891—

Bill of Exchange—

Payable on demand or at sight or on presentation (or within three days after date or sight (d) ) . . . . £0 : 0 : 2 (e)

Bill of Exchange of any other kind whatsoever (except a Bank Note) and Promissory Note of any kind whatsoever (except a Bank Note) drawn, or expressed to be payable, or actually paid or indorsed, or in any manner negotiated in the United Kingdom—

Where the amount or value of the money for which the bill or note is drawn or made does not exceed £5 . . . . £0 : 0 : 2 (f)

Exceeds £5 and does not exceed £10	.	.	0 : 0 : 2
„ £10 „ £25	.	.	0 : 0 : 3
„ £25 „ £50	.	.	0 : 0 : 6
„ £50 „ £75	.	.	0 : 0 : 9
„ £75 „ £100	.	.	0 : 1 : 0

For every £100 and also for any fractional part of £100 of such amount or value . . . . . £0 : 1 : 0

By s. 10 of the Finance Act, 1899, the duty payable on a bill of exchange drawn and expressed to be payable out of the United Kingdom, when actually paid or indorsed or in any manner negotiated in the United Kingdom, shall, where the amount of the money for which the bill is drawn exceeds fifty pounds, be reduced so as to be—

(i) Where the amount exceeds fifty pounds and does not exceed one hundred pounds, sixpence ; and

(ii) Where the amount exceeds one hundred pounds, sixpence for every hundred pounds, and also for any fractional part of one hundred pounds of that amount. For the purposes of stamping, a bill drawn in and expressed to be payable in the Channel Islands or the Isle of Man, is treated as if it were a foreign bill, but otherwise as an inland bill.

178. **Exemptions.**—The following documents are exempted by the Stamp Act, 1891. Exemptions allowed by special Acts are dealt with under their appropriate headings.

(d) Finance Act, 1899, Section 10.

(e) and (f) The penny stamp duty was increased to twopence under the provisions of the Finance Act, 1918.

(1) Bill or note issued by the Bank of England or the Bank of Ireland.

(2) Draft or order drawn by any banker in the United Kingdom upon any other banker in the United Kingdom, not payable to bearer or to order, and used solely for the purpose of settling or clearing any account between such bankers. (See Note, p. 165.)

(3) Letter written by a banker in the United Kingdom to any other banker in the United Kingdom, directing the payment of any sum of money, the same not being payable to bearer or to order, and such letter not being sent or delivered to the person to whom payment is to be made, or to any person on his behalf.

(4) Letter of credit granted in the United Kingdom, authorising drafts to be drawn out of the United Kingdom, payable in the United Kingdom.

(5) Draft or order drawn by the Paymaster-General on behalf of the Court of Chancery in England, or by the Accountant-General of the Supreme Court of Judicature in Ireland.

(6) Warrant or order for the payment of any annuity granted by the National Debt Commissioners, or for the payment of any dividend or interest on any share in the Government or Parliamentary stocks or funds.

(7) Bill drawn by any person under the authority of the Admiralty upon and payable by the Accountant-General of the Navy.

(8) Bill drawn (according to a form prescribed by His Majesty's orders by any person duly authorised to draw the same) upon and payable out of any public account for any pay or allowance of the army or auxiliary forces or for any other expenditure connected therewith.

(9) Draft or order drawn upon any banker in the United Kingdom by an officer of a public department of the State for the payment of money out of a public account.

(10) Bill drawn in the United Kingdom for the sole purpose of remitting money to be placed to any account of public revenue.

(11) Coupon or warrant for interest to and issued with any security, or with an agreement or memorandum for the renewal or extension of time for payment of a security. By s. 40 of the Finance Act, 1894, a coupon for interest on a marketable security as defined by the Stamp Act, 1891, being one of a set of coupons whether issued with the security or subsequently issued in a sheet, shall not be chargeable with any stamp

duty. The exemption given by this section does not include a coupon attached to a scrip certificate, which is therefore subject to stamp duty.

An acknowledgment by any banker of the receipt of any bill of exchange or promissory note for the purpose of being presented for acceptance or payment does not require a stamp, nor does a receipt given upon any bill or note of the Bank of England or the Bank of Ireland. By the Finance Act, 1895, the name of a banker (whether accompanied by words of receipt or not) written in the ordinary course of his business as a banker upon a bill of exchange or promissory note duly stamped, or the name of the payee written upon a draft or order, if payable to order, does not constitute a receipt chargeable with stamp duty. It should be noted that a bill which is drawn and expressed to be payable out of the United Kingdom is subject to a reduced scale of stamp duty (as specified in s. 2, *ante*) when it is actually paid, or indorsed, or in any manner negotiated in the United Kingdom, but if received merely for acceptance it is exempt from duty.

**179. Stamping Inland Bills and Notes.**—The twopenny stamp on inland bills payable on demand, at sight or on presentation or within three days after date or sight may be impressed or adhesive. Two penny postage stamps may also be used, but the impressed twopenny "Bill or Note" stamp is not applicable. The drawer and person to whom the bill is presented for payment are the only persons qualified to affix and cancel the adhesive stamp or stamps on one of these instruments. If the drawer affixes a stamp he must cancel it before he delivers the bill out of his hands.

The *ad valorem* stamps on inland bills payable more than three days after date or sight must be denoted by impressed appropriated "Bill or Note" stamps. An "appropriated" stamp is one which, by means of words on the face of it, is specially appropriated to a particular class of document and cannot be used for any other. An *ad valorem* stamp is one which varies in amount according to the value of the instrument to be stamped. Inland promissory notes, whether payable on demand or after date, must bear *ad valorem* impressed "Bill or Note" stamps. (See also Note on p. 165.)

**180. Stamping Foreign-drawn Bills and Notes.**—A bill drawn abroad which is payable on demand, at sight or on presentation or within three days after date or sight may bear a twopenny postage or impressed stamp or two penny postage stamps (see preceding section). Bills drawn abroad payable at more than

three days after date or sight, and all promissory notes drawn abroad, must bear adhesive *ad valorem* appropriated "Foreign Bill or Note" stamps. By s. 35 of the Stamp Act, 1891, "every person into whose hands any bill of exchange or promissory note drawn or made out of the United Kingdom comes in the United Kingdom before it is stamped shall, before he presents for payment, or indorses, transfers, or in any manner negotiates, or pays the bill or note, affix thereto a proper adhesive stamp or proper adhesive stamps of sufficient amount, and cancel every stamp so affixed thereto. Provided as follows: (i) If at the time when any such bill or note comes into the hands of any *bond fide* holder there is affixed thereto an adhesive stamp effectually cancelled, the stamp shall, so far as relates to the holder, be deemed to be duly cancelled, although it may not appear to have been affixed or cancelled by the proper person. (ii) If at the time when any such bill or note comes into the hands of any *bond fide* holder there is affixed thereto an adhesive stamp not duly cancelled, it shall be competent for the holder to cancel the stamp as if he were the person by whom it was affixed, and upon his so doing the bill or note shall be deemed duly stamped, and as valid and available as if the stamp had been cancelled by the person by whom it was affixed. But neither of the foregoing provisos is to relieve any person from any fine or penalty incurred by him for not cancelling an adhesive stamp."

By s. 36 of the same Act "a bill of exchange or promissory note which purports to be drawn or made out of the United Kingdom is, for the purpose of determining the mode in which the stamp duty thereon is to be denoted, to be deemed to have been so drawn or made, although it may in fact have been drawn or made within the United Kingdom."

For stamping purposes the Channel Islands and the Isle of Man are deemed to be foreign countries, and bills and notes drawn or made in these parts are foreign bills and notes. So far as the law is concerned, however, they are inland instruments, *e.g.* a bill drawn in the Isle of Man need not be protested on dishonour in England. Stamp duties are imposed for revenue purposes and the fiscal arrangements of the Channel Islands and the Isle of Man are controlled by those islands independently of the United Kingdom. For note respecting Ireland see Appendix, p. 290.

Where a bill is drawn abroad in foreign currency the amount for the purposes of stamping is calculated according to the rate of

exchange for demand drafts current on the date of the bill unless the instrument contains a statement of current rate of exchange, and is stamped in accordance with that statement. This is provided by the Stamp Act, 1891, s. 6. In times when exchange rates are subject to wide and frequent fluctuations, it may be a difficult matter for a person not a banker to find out what was the current rate on the day of drawing the bill, and, in practice, the rate taken for stamping purposes is often the rate on the day of maturity. In view, however, of the wording of the Stamp Act, the Inland Revenue authorities contend that this practice cannot be supported.

A bill is not invalid in the United Kingdom by reason only that it is not stamped in accordance with foreign stamp laws, and unless it is desired to secure right of action on the bill in the foreign court, only the English stamp laws need be considered.

**181. Cancellation of Adhesive Stamps.**—An instrument, the duty upon which is required or permitted by law to be denoted by an adhesive stamp, is not to be deemed duly stamped with an adhesive stamp unless the person required by law to cancel the adhesive stamp cancels the same by writing on or across the stamp his name or initials, or the name or initials of his firm, together with the true date of his so writing, or otherwise effectively cancels the stamp and renders the same incapable of being used for any other instrument, or for any postal purposes, or unless it is otherwise proved that the stamp appearing on the instrument was affixed thereto at the proper time (g). Where two or more adhesive stamps are used to denote the stamp duty upon an instrument, each or every stamp is to be cancelled in the manner aforesaid (h). Every person who, being required by law to cancel an adhesive stamp, neglects or refuses duly and effectually to do so in the manner aforesaid, shall incur a fine of ten pounds (i).

**182. Penalty for Issuing, etc., any Unstamped Bill or Note.**—Every person who issues, indorses, transfers, negotiates, presents for payment, or pays any bill of exchange or promissory note liable to duty and not being duly stamped shall incur a fine of ten pounds, and the person who takes or receives from any other person any such bill or note either in payment or as a security, or by purchase or otherwise, shall not be entitled to recover thereon, or to make the same available for any purpose whatever (j). Provided

(g) Stamp Act, 1891, Section 8 (1). (h) Stamp Act, 1891, Section 8 (2).  
(i) Stamp Act, 1891, Section 8 (3). (j) Stamp Act, 1891, Section 38 (1).

that if any bill of exchange payable on demand or at sight or on presentation is presented for payment unstamped, the person to whom it is presented may affix thereto an adhesive stamp of two-pence, and cancel the same, as if he had been the drawer of the bill, and may thereupon pay the sum in the bill mentioned, and charge the duty in account against the person by whom the bill was drawn, or deduct the duty from the said sum, and the bill is, so far as respects the duty, to be deemed valid and available (k). But the foregoing proviso is not to relieve any person from any fine or penalty incurred by him in relation to such bill (l).

**183. Stamping Bills and Notes after Execution.**—Where a bill of exchange or promissory note has been written on material bearing an impressed stamp of sufficient amount but of improper denomination, it may be stamped with the proper stamp on payment of the duty, and a penalty of forty shillings if the bill or note be not then payable according to its tenor, or of ten pounds if the same be so payable (m). Except as aforesaid, no bill of exchange or promissory note shall be stamped with an impressed stamp after the execution thereof (n). (See Note, p. 165.)

**184. Stamping Bills in a Set.**—Where a bill of exchange is drawn in a set according to the custom of merchants, and one of the set is duly stamped, the other or others of the set shall, unless issued or in some manner negotiated apart from the stamped bill, be exempt from duty; and upon proof of the loss or destruction of a duly stamped bill forming one of a set, any other bill of the set which has not been issued or in any manner negotiated apart from the lost or destroyed bill may, although unstamped, be admitted in evidence to prove the contents of the lost or destroyed bill (o).

**185. Stamping Bill or Note Payable with Interest.**—Where a bill or note is payable with interest the stamp duty is chargeable on the principal sum only unless the interest is capitalised or the actual amount of interest is named. Thus an inland bill or note for £500 at six months after date with interest at the rate of 5 per cent. per annum would require a stamp to the value of five shillings, whereas if the instrument were drawn for “£500 with interest £12 : 10 : 0” it would require a stamp to the value of six shillings.

**186. Stamping Foreign-drawn Bills presented for Acceptance.**—Section 35 of the Stamp Act, 1891, quoted on p. 162, does not cover

(k) Stamp Act, 1891, Section 38 (2), and Finance Act, 1918, Section 36.

(l) Stamp Act, 1891, Section 38 (3). (m) Stamp Act, 1891, Section 37 (1).

(n) Stamp Act, 1891, Section 37 (2). (o) Stamp Act, 1891, Section 39.

presentation of a foreign-drawn bill unaccompanied by any negotiation or any indorsement in order to transfer the property in the bill. Accordingly, provided the bill is merely presented for acceptance, no foreign bill stamp is required, but if any of the operations described in s. 35 are performed, or, if it is held as a security, then the bill must be duly stamped.

*Note* (see p. 160).—It should be noted that the expression, “United Kingdom,” when used in the Stamp Act, must now be construed as exclusive of the Irish Free State. Hence documents of the kind described in exemptions (2) and (3) issued by bankers in Great Britain and Northern Ireland to bankers in the Irish Free State must now be stamped on issue.

*Note* (see p. 161).—On occasions, a foreign drawee sends a bill, duly accepted, to his British creditor, who has only to sign as drawer and, if the bill be payable to his order, add his indorsement, to have a complete bill. As the foreign drawee is not likely to have bill forms bearing the requisite British “Bill or Note” impressed stamps, the Inland Revenue authorities permit such a bill to be duly stamped, provided it be presented to them for stamping before being signed by the drawer and within seven days of its arrival in the United Kingdom, and be accompanied by a written statement that no use has been made of it in the meantime.

*Note* (see p. 164).—Hitherto this has been the only exception to the general rule that a bill of exchange drawn in this country cannot be stamped after execution, but s. 42, Finance Act, 1933, now provides that

“ Notwithstanding any enactment to the contrary, a bill of exchange which is presented for acceptance, or accepted, or payable, outside the United Kingdom shall not be invalid by reason only that it is not stamped in accordance with the law for the time being in force relating to stamp duties, and any such bill of exchange which is unstamped or not properly stamped may be received in evidence on payment of the proper duty and penalties as provided by s. 14 and subs. (1) of s. 15 of the Stamp Act, 1891.”

The penalty is £10 plus the unpaid duty and the Inland Revenue authorities have power to reduce or waive the penalty.

## CHAPTER XII

### CLEARING SYSTEM

**187. Introductory.**—In the *Report of the Bullion Committee*, issued in the year 1810, the Clearing System was defined as a method “by which all drafts are brought daily to a common receptacle where they are balanced against each other.” To this definition should be added “and only the balances paid or received.” The principle of the Clearing System is payment by set-off, *i.e.* mutual claims are put one against the other. To give a simple example, suppose that two banks, A and B, have each received from their customers cheques drawn on the other, and that the method of settlement is for bank A to send a clerk across to bank B and present for payment in cash the total of cheques drawn on B, say £2,500. Later, a clerk from bank B presents to bank A cheques for, say, £2,200, and receives the amount in cash. If to these two banks you add banks C, D, and E, it will readily be perceived that each bank would have to keep a very large cash balance solely in order that it may be in a position to meet the demands of the other banks, and would also require a considerable staff to go round to the other banks.

But if A and B arrange a time and place to meet and set-off their mutual claims, only the actual balance, *i.e.* £300 in the example given, need be paid over in cash. If we effect a further economy by arranging that the balance shall be settled by a draft on London (called a “banker’s payment”) instead of in cash, we have an illustration of what takes place at the “local exchange” in a small country town. In the case of banks which act as agents for each other, a clearing balance is settled by the banks debiting and crediting, respectively, their head offices for account of the other.

In very large cities this method would be too cumbrous, and we find that Birmingham, Bristol, Hull, Leeds, Leicester, Liverpool, Manchester, Newcastle, Nottingham and Sheffield, have started

local clearing houses conducted on the same principles as the London Clearing House, but limited to local cheques only.

The clearing in the Provincial Clearing Houses is managed by the Bank of England in places where there is a branch and in other places by a bank selected to carry out the duties.

A good clearing system is of incalculable benefit to the community as a time, labour and currency saver. Indeed, the modern cheque system, under which the vast majority of the country's internal business transactions are settled by cheques, would have been impossible but for the speedy, safe and efficient manner in which they can be cleared through the London Clearing House. To the banks the clearing means a great saving in time, labour, and cash balances.

**188. The London Clearing House.**—The exact date of the foundation of the system which is now known as the London Clearing House is not known. Probably a year or so prior to 1773 saw its origin, which is said to have been due to the various clerks of the private banks (there were then no joint stock banks except the Bank of England) meeting at an inn in Lombard Street for refreshment, followed by an exchange of cheques. Soon after the date mentioned we find records of a definite room being engaged as a meeting-place for the clerks.

Certain banks and bankers are members of the Clearing House and clear their own cheques and the cheques drawn on those banks for which they act as clearing agents. A list of the present members is given later in the specimen Summary Sheet.

Members are allotted desks at which they have their representatives. The various cheques, etc., are termed "articles," while bundles of articles are termed "charges." The charges which a banker receives from other bankers are termed his "in-clearing," while those he gives to the other bankers are termed his "out-clearing."

A banker's out-clearing, therefore, consists of cheques drawn on other banks which have been paid in at his various branches and those branches of the banks for whom he acts as clearing agent. The articles are sorted at the Head Office (London) into charges of those articles drawn on each of the other members of the Clearing House, or drawn on the banks for which the members act as clearing agents. To assist the Head Offices, each branch prepares a separate list of its cheques on each of the clearing banks, and the totals of these branch lists are taken into the out-clearings, thus effecting a great reduction in the number of entries. Each charge,

having been listed and totalled, is taken to the Clearing House and left at the desk of the banker to whom it relates. In this way each member of the Clearing House passes on his out-clearing and receives his in-clearing.

The in-clearing is at once listed and totalled in the Clearing House, each item being listed separately. This method enables a better check against the relative out-clearing to be made. It has to be agreed with the banker whose out-clearing it formed. This process is carried out for each banker in the Clearing House, and the difference between the total received and the total given to each banker is brought into a balance or summary sheet, a specimen of which is given below. The banker to whom a balance is due puts the amount on the debit side of the Summary Sheet, while the banker who has to pay puts the amount on the credit side. It should be noted that both the Country Cheques and Metropolitan Clearings are settled through the Town Clearing. Opposite "C.H." (i.e. Clearing House) are placed the differences which arise in the clearings or in the unpaids, and which have to be settled for or against the banker.

#### SUMMARY SHEET

##### BARCLAYS BANK, LIMITED.

Debtors.

Creditors.

Bank  
Westminster Bank Lomb. St.  
District

Glyn  
Westminster Bank H.O.  
Lloyds H.O.  
Do. City Office

Midland Bank H.O.  
Midland Bank Thread. St.  
do. Branches  
Martins  
National  
Nat. Prov. Bank H.O.

Westminster Bank Thread St.  
Coutts  
Nat. Prov. Bank P. St.  
Williams  
Country Clearing  
Metropolitan Clearing  
C.H.

These balances are cast up and the final balance, *i.e.* the difference between the various amounts *due to* the other banks and the various amounts *due by* the other banks, is ascertained, and either transferred from the banker's own account with the Bank of England to the Account of the Clearing Bankers, or transferred from the latter to the banker's own account. The account of the Clearing Bankers is kept with the Bank of England, and all clearing bankers must have accounts with that Bank. In this way the total of the day's clearings is settled by means of a couple of book entries for each clearing banker, one a debit to its own account and the other a credit to the Clearing Banker's account, or *vice versa*.

Since every "in-clearing" is also another banker's "out-clearing," it follows that the total in-clearings must equal the total out-clearings. For the same reason, the total amounts claimed by the various Clearing Bankers on their Summary Sheets must equal the amounts stated to be payable by the other Clearing Bankers. Hence, the Account of the Clearing Bankers can be likened to a "pool" into which the clearing banks pay or out of which they draw, as the case may be, and when all have duly done this, there should be no balance left in the account.

It should be noted that the practice of the Bank of England differs from that of the other members of the Clearing House as regards the Town Clearing, which it clears on one side only, namely the out-side. This means that the Bank presents cheques on the other banks through the Clearing House, but cheques on the Bank must be presented direct. In the case of the Country and Metropolitan Clearings, the Bank clears on both sides in respect of its own branches.

From the list of Town Clearing Banks which all bank readers will find in their offices, it will be seen that the charges on each of two of the large banks have to be sorted into three parcels, and, as regards one large bank, into two parcels, some branches going into one parcel and some into the other. All Clearing Bankers must present all Town and Metropolitan cheques through the Clearing House.

Below are given the two forms by which the transfers are made. It will be noted that the debit transfer authorises a transfer of money from the signing banker's own account to the Clearing Banker's Account. The left half is addressed to the Bank of England, and is signed by the banker concerned, while the right half is a certificate stating that the transfer has been duly effected.

It is signed on behalf of the Bank of England, and is countersigned by an Inspector of the Clearing House.

## TRANSFER.

SETTLEMENT AT THE CLEARING  
HOUSE.

*London, .... 19 .*

To the Cashiers of the Bank of England,

Be pleased to TRANSFER from our Account the sum of ..... and place it to the credit of the Account of the Clearing Bankers, and allow it to be drawn for, by any of them (with the knowledge of either of the Inspectors, signified by his countersigning the Drafts).

£....

SETTLEMENT AT THE CLEARING  
HOUSE.

*Bank of England, .... 19 .*

A TRANSFER for the sum of ..... has this evening been made at the Bank, from the account of Messrs. .... to the Account of the Clearing Bankers.

For the Bank of England.

£....

This Certificate has been seen by me,

....., Inspector.

## CREDIT.

## B.

SETTLEMENT AT THE CLEARING  
HOUSE.

*London, .... 19 .*

To the Cashiers of the Bank of England,

Be pleased to CREDIT our Account the sum of ..... out of the money at the credit of the account of the Clearing Bankers.

£....

Seen by me,  
....., Inspector at  
the Clearing House.

SETTLEMENT AT THE CLEARING  
HOUSE.

*Bank of England, .... 19 .*

The account of Messrs. ..... has this evening been CREDITED with the sum of ..... out of the money at the credit of the account of the Clearing Bankers.

£....

For the Bank of England.

The left half of a credit transfer consists of a request addressed to the Bank of England, signed by the banker to receive the money and countersigned by an Inspector of the Clearing House, to credit the banker's account with the sum stated out of the funds of the Clearing Bankers. The right half is a certificate signed by the Bank of England stating that the transfer has been effected.

As soon as the in-clearing charges have been agreed, they are dispatched to the Head Office of the banker concerned to be sorted, and the cheques examined and paid, or sent to the respective branches upon which they are drawn.

The general working of the London Clearing House having been described, the special rules applicable to each of the three sections into which the clearings are divided will now be given. The sections are the Town, Country, and Metropolitan, and the cheques are marked, respectively, "T," "C," and "M" in the left-hand bottom corner.

189. *Town Clearing.*—The Town Clearing was the original clearing, and at one time embraced the cheques drawn on the private bankers of the City of London and the West End. The Clearing House is situated in Lombard Street, London, E.C., and the cheques included in the Town Clearing are those drawn on the banks within an area contained within a few minutes' walk from the Clearing House. To those familiar with the "City," it will be seen that the Clearing House occupies a position within a stone's throw of all the Head Offices of the Clearing Bankers, and many of the Head Offices and London Offices of the colonial and foreign banks which have crowded into a district somewhat smaller than that of the City of London. In this district also are to be found the Stock Exchange, the bill and exchange brokers, and the Head Offices of many of the big insurance companies, etc.

The Town Clearing is divided into two parts, the Morning and the Afternoon Clearings. The Morning Town Clearing opens at 10.30 a.m., and cheques, etc., have to be received before 11.5 a.m. The Afternoon Clearing opens at 2.30 p.m. and closes at 3.50 p.m. "Returns," *i.e.* cheques, etc., refused payment, have to be returned to the Clearing House not later than 5 p.m., excepting on April 1st, June 30th, October 1st, and December 31st, when the times for the last delivery and for Returns are extended. On Saturdays the times are: Morning Clearing, 9 a.m. to 10.20 a.m.; Afternoon, 12 noon to 12.35 p.m.; Returns not later than 1.30 p.m. In both cases the times may be extended on certain occasions.

Every "Return" must bear an answer in writing (in words without abbreviation), stating why payment has been refused.

The Morning Town Clearing consists almost entirely of due bills and articles received by the Clearing Bankers' branches and the country bankers for whom they act as clearing agents, while the Afternoon Clearing consists of articles paid into the Town Clearing offices during the day. All Town cheques paid into a Town Clearing office are put through the Town Clearing the same day as they are paid in. Certain suburban branches also send up their Town cheques by messengers and they are included in the After-

noon Clearing. If, by chance, any article misses the Town Clearing, it may be presented to the clearing office upon which it is drawn to be "marked," *i.e.* to have initials placed on it to indicate that it will be paid or "Refer to Drawer," etc., as the case may be. The presentation for marking must be made within 15 minutes of the time the Town Clearing closes.

All articles presented through the Clearing House must bear the name of the presenting banker stamped, in the case of cheques, on the face, and, in the case of bills, on the back. Great inconvenience and trouble is given when an article is returned unpaid if it has not been stamped by the presenting banker. Indeed, the latter may find himself liable to his customer for the amount, should the delay in hearing its fate extend beyond the time allowed by the Bills of Exchange Act for presentation of the cheque to the drawee-banker, *i.e.* the banker upon whom it is drawn.

From the above it will be seen that the clerks dealing with the clearing have to be most expeditious, the time allowed for returning articles deposited at the Clearing House just before closing time being very short for checking indorsements, words and figures, dates, signatures, drawers' balances, etc. Similarly, the time allowed for passing articles received just before closing through the books of the receiving office and presenting them to the Clearing House is very short.

The Town Clearing includes cheques, drafts and due bills payable at the banks included in the clearing.

190. *Country Cheque Clearing.*—This section of the Clearing comprises only cheques and drafts payable on demand drawn on a bank. The articles may be drawn on any country Head Office or branch in England and Wales of a banker who is a member of the Clearing House, or for whom one of the Clearing Bankers acts as clearing agent. In the case of banks whose Head Offices are not in the Clearing, the clearing agent is printed at the bottom of their cheques. The Isle of Man, the Channel Islands, and the Scilly Isles are not included in the Country Clearing.

The final balance due to or by any particular Clearing Banker is transferred to the Town-Clearing Summary Sheet, against the words "Country Clearing." The Town Summary Sheet into which a day's Country Clearing balance is carried is the one dated two days later. The reason for this is simple. Cheques drawn on country banks are sorted and sent to the offices upon which they are drawn, and those offices must, according to the Clearing rules,

return all cheques they do not intend to pay direct to the banker whose name and address is stamped on the cheques. The amounts of the cheques thus returned are debited to the Clearing Banker, while the total cheques sent are credited. The Clearing Banker, therefore, receives credit for the net amount he is to pay to the Clearing House on account of the Country Cheque Clearing. For example, cheques put through the Clearing House on, say, a Tuesday, are received in the Country on Wednesday, and, on Thursday morning, the Clearing Banker receives advice as to the amount he has to answer for to the Country Cheque Clearing. He pays for the total cheques he received, and receives credit for the items which his country correspondents have returned. These "unpays" are represented by debit slips against the banks to which they have been returned.

The Country Clearing rules provide that country bankers must stamp their names and addresses and the name of their clearing agent across all cheques sent for collection through the Country Clearing.

As regards cheques received from the London Agent (through the Clearing House), the rules provide that any unpaid cheque must be returned direct to the banker by whom it is crossed.

The Country Clearing opens at 10.30 a.m. and continues until 12.30. On Saturdays the times are 10 a.m. and 11.5 a.m., respectively.

191. *Metropolitan Clearing*.—This clearing includes the area in London surrounding that allotted to the Town Clearing, and corresponds, roughly, to the London Postal District. Outlying London suburban branches not included in this clearing are treated as Country branches. These articles include all cheques, drafts, due bills, etc., payable at the banks and branches included in the area.

The Metropolitan Clearing is the first of the day and opens at 9 a.m. It closes at 10.30 a.m. On Saturdays, the times are 8.45 a.m. and 9.50 a.m., respectively. The charges are distributed in a manner similar to that of the Town Clearing, and, as soon as the in-clearings have been entered, the articles are dispatched to the Head Offices concerned for distribution by their own messengers to the offices in the Metropolitan Clearing upon which they are drawn. These offices must return, on the day of presentation, by post, any *cheque* refused payment direct to the crossing bank or branch (or the English office or London Agent, if the crossing bank is a foreign bank), sending to the Head Office or Clearing Agent a debit slip for

each unpaid. The slips are passed through the Town Clearing on the day of settlement. Unpaid *bills* and bills not due are returned by post on the day of presentation to the Head Office or London Agent of the presenting bank, and the crossing bank or branch notified the same night by post.

The in- and out-clearings are listed in the Clearing House, and the totals (not balances) are carried into the Town Summary Sheet and included in the settlement of the next business day succeeding the day of presentation.

**192. Course of Cheques presented through the Clearing.**—In order that the course of cheques presented through the Clearing House may be thoroughly understood by the reader, we will now trace the course of a Town, Country, and a Metropolitan cheque received at branches situated, respectively, in the Town, Country, and Metropolitan areas. In all cases we will presume the cheque has been paid in by the customer on a Tuesday. If a period which includes a Sunday or Bank Holiday is taken, then an additional day for each non-business day must be added, both to the time required for clearance and to the number of days' interest chargeable for crediting in advance of clearance. Interest on the amount of the cheque arises when the collecting banker credits it before he has received the proceeds from the paying banker if the account is overdrawn, or if the account is in credit and interest is allowed. The appropriate debit "decimals" are calculated by multiplying the amount of the uncleared cheque by the number of days the banker is waiting for the proceeds.

**193. At a Town Branch.**—A Town cheque received any time before close of business will be sent over to the Clearing House, and, if paid, the Head Office will receive payment the same day in the day's settlement. If the cheque is unpaid, it must be back at the Clearing House before 5 p.m. The presenting banker will, therefore, know its fate the day he receives it and if paid can treat it as cash.

A Country cheque received in the morning can be put through the Clearing House any time between 10.30 a.m. and 12.30 a.m. If received after this it must be held over till the next day. We will suppose the cheque to have been received too late for the day's clearing. It will therefore be sent over to the Clearing House on Wednesday, and will be sent by the Clearing Banker whose in-clearing it becomes to the Country bank or branch upon which it is drawn. It arrives at the latter on Thursday. If unpaid, it must be returned direct to the Town branch the same day, and will reach

the Town branch on Friday. The amount in which the cheque is included will be passed through Friday's settlement of the Town Clearing. If, therefore, this cheque has been credited as cash to a customer's account, on which interest is charged or allowed, the banker would charge three days' interest on the amount to compensate for having credited the customer before receipt of the proceeds of the cheque.

As the Metropolitan Clearing opens at 9 a.m. and closes at 10.30 a.m., the majority of Metropolitan cheques must be held until the next day, and we will assume this in the case of our Metropolitan cheque. Passing through the Clearing House on Wednesday morning, it should reach the office upon which it is drawn about midday (earlier or later according to distance from the City), having been brought down from the Head Office or Clearing Agent by messenger. If it is unpaid, it has to be returned on the day of presentation by the bank upon which it is drawn direct to the crossing bank or branch, a debit slip giving full particulars being sent to the returning bank's Head Office or Clearing Agent for presentation through the next day's Town Clearing. It is evident, therefore, that a Metropolitan branch has not a great deal of time in which to list and cast their clearing, check dates, amounts, etc.

If duly paid, it will be included in the next day's (Thursday's) settlement of the Town Clearing, and, if it was credited as cash on Tuesday, then two days' interest on the amount is chargeable, where interest is charged or allowed.

194. *At a Country Branch.*—A Town Clearing cheque paid into a country bank on a Tuesday will be included amongst the other cheques on that particular Clearing Banker, and sent that night to the Head Office or Clearing Agent in London. On Wednesday morning the latter delivers it to the representative in the Clearing House of the Clearing Banker upon whom it is drawn. The Morning Town Clearing opens at 10.30 a.m., and it is through this Clearing that cheques received from country branches and correspondents are presented. As soon as the cheques have been received from the Clearing House by the Head Office or Clearing Agent, they are passed on to the department concerned, or sent by messenger to the particular Town Clearing Branch upon which they are drawn. If the latter does not intend to pay the cheque we are considering, it must be returned to the Clearing House before 4.50 p.m. and the receiving Clearing Banker will return the cheque that night to the office from which he received it.

Hence the country office will know on Thursday morning whether or not the cheque has been paid. The cheque will be included in the Wednesday's settlement of the Town Clearing. If the country branch has credited it as cash, one day's interest is the appropriate compensation where interest is charged or allowed.

If a Country Clearing cheque is paid into a bank in another country town, it will be included in the list of country cheques cleared through the particular bank or clearing agent, and will be sent to London to the receiving bank's Head Office or Clearing Agent the same day as received. The latter on Wednesday morning will pass the cheque through the Country Clearing, and the banker in whose in-clearing it is will dispatch it on Wednesday night to his country branch or correspondent. If the cheque is not paid, it must be returned on Thursday, the day it is received from London, to the country banker whose name and address is stamped across it. If it is duly paid, its amount will be included in Friday's Town Clearing settlement. Hence, if credited as cash by the receiving banker, he is entitled to charge three days' interest where applicable, and he will know its fate on Friday.

A Metropolitan cheque will be sent to the Head Office or Clearing Agent in the appropriate list, and on Wednesday will be duly delivered through the Clearing House to the drawee-bank's Head Office or Clearing Agent. By the latter it is sent to the branch concerned. If the cheque is to be dishonoured, it must be returned direct to the country banker whose name and address will have been stamped across it. If paid, it will be duly included in the next day's (Thursday's) Town Clearing settlement.

In the case of a Metropolitan cheque received at a country branch, we observe that the latter will know its fate on Thursday, and that two days' interest on the amount is appropriate compensation for crediting as cash on Tuesday to accounts on which interest is calculated.

**195. At a Metropolitan Branch.**—A Town Clearing cheque paid in at a Metropolitan branch can either be sent by messenger to the Head Office or Clearing Agent for presentation through the same day's Town Clearing, or, as would usually be the case, retained and sent off at night for presentation through the Clearing House in the next day's Town Clearing. If the banker upon whom the cheque is drawn does not pay it, he must return it the same day to the Clearing House not later than 4.50 p.m. If paid, the cheque will be included in the day's settlement of the Town Clearing.

Hence, in the case of a Town Clearing cheque received at a Metropolitan branch, it may be possible to clear it the same day, but in the general way it would be cleared in the clearing of the day following its receipt, so that if credited as cash, one day's interest would be charged where applicable, and its fate will be known on Thursday morning.

A Country Clearing cheque paid in at a Metropolitan branch on a Tuesday will be duly listed under the appropriate Clearing Agent, and dispatched that night to the receiving bank's Head Office or Clearing Agent for presentation through Wednesday's Country Clearing. The in-clearing bank will post it the same night to the drawee-branch. If the latter wishes to return the cheque unpaid, it must be sent off on Thursday direct to the Metropolitan branch whose name and address is stamped across it. It will reach the latter on Friday. If the cheque is paid, it will be included in the total of Country cheques passed in Friday's Town Clearing settlement. Accordingly, the Metropolitan branch will know the fate of the Country cheque on the Friday, and if it has been credited as cash, three days' interest on the amount is necessary to compensate the banker in cases where he charges or allows interest.

A Metropolitan cheque will be duly listed and sent off Tuesday evening to the receiving branch's Head Office or Clearing Agent, and will be put through Wednesday's Metropolitan Clearing. The banker in whose in-clearing it is will send it by messenger to the branch upon which it is drawn. The latter, if unable to pay the cheque, must return it direct to the bank or branch bank whose name and address is on the crossing. If the cheque is duly paid, it will be included in the total of the Metropolitan Clearing passed through Thursday's Town Clearing settlement. If it has been credited as cash, the Metropolitan branch is entitled to two days' interest on the amount in the appropriate cases, and will know the fate of the cheque on Thursday morning when it will be received from the branch's Head Office or Clearing Agent.

196. *Walks.*—There are published lists showing what banks are in the Town and Metropolitan Clearings, and readers should, where possible, consult these lists. All other cheques drawn on the branches of the banks included in these lists are Country cheques. There are, however, a considerable number of banks in the Town and Metropolitan areas which do not clear through the Clearing House. These are the foreign and colonial banks, the London offices of the Scotch banks, a number of merchant-bankers,

Government departments and the G.P.O. These banks, etc., are on the "walks," and the following is the method by which cheques drawn on them and received by them are cleared.

All these banks have accounts with a clearing bank into which they pay cheques, bills, etc., paid to them by their customers. There is no obligation to pay their cheques into their accounts, and they can present them direct to the drawee-banks if they consider it desirable. The cheques drawn on the walks banks received by the Clearing Banks are presented to each bank by clerks and messengers. A walk clerk is given a certain area to cover, and he gets his charges all ready for presentation, and leaves one at each bank in his walk. In some cases he will at once receive cash, or a "banker's payment," *i.e.* a draft addressed to the paying bank's banker (a member of the Clearing House) authorising the payment of the required amount, while in others, he will call again later in the day for his payment, thus giving the drawee-banker an opportunity to check the items, dates, indorsements, etc.

The reader will readily see that this system requires a large number of clerks and messengers, and is very costly and laborious compared with the method of the Clearing House.

## CHAPTER XIII

### BANKING INSTRUMENTS

197. **Bank-notes.**—*Issue.*—A bank-note is a promissory note made and issued by a banker and payable to bearer on demand. The right to issue bank-notes is strictly controlled, and has, in England and Wales, since 1921, become the monopoly of the Bank of England.

Bank-notes, in England and Wales, can be issued for £1 and 10s.; also for £5, and multiples of £5. In Scotland and Northern Ireland the banks of issue can issue notes from £1 upwards, but not for fractions of a pound.

Bank of England notes are exempt from stamp duty, and pay no composition in lieu thereof, but the whole of the profits derived from its Issue Department are paid over to the Government.

198. *Tender.*—Bank of England notes are legal tender in England and Wales for any amount. The small notes of £1 and 10s. are also legal tender in Scotland and Northern Ireland. So long as there remains in force s. 1 (1) of the Gold Standard Act, 1925, which provides that the Bank of England is not bound to pay any of its notes in gold coin, notes for £1 and 10s. are legal tender by the Bank itself and its branches. This also applies to the payment of its own notes of the larger denominations.

When payment is made by a bank-note which is legal tender, the creditor cannot insist on the note being indorsed. Since Bank of England notes are payable to bearer on demand, the issuers cannot legally insist upon a person writing his name and address upon them when presenting such notes for payment. Nevertheless, the Bank of England does require each presenter of a Bank of England note for £5 and upwards to write his name and address on the back before they will exchange it.

199. *Notes by Post.*—When dispatching notes by post, it was formerly the practice for the sender to cut the notes into halves and remit the halves by different mails. This mutilation does not affect the negotiability of the notes. With regard to the property in the half-notes, it has been held that a third party, who sent the halves of two bank-notes on account of the debt of another person with whom he was about to enter into partnership, was entitled to demand the half-notes back from the receiver when, the partnership arrangements having fallen through, the third party no longer had any desire to complete the transaction by sending the corresponding halves. This decision seems to suggest that the property in the half-notes remains in the sender, but possibly the decision would have gone the other way if the question had arisen in connection with a direct payment from debtor to creditor. The more modern practice, where notes are frequently sent, is to send them entire, and to cover them by insurance under a floating policy. Before sending notes of £5 and upwards by post, full particulars of the numbers, dates, amounts and places of issue, should be recorded for reference in case of loss.

200. *Lost and Destroyed Notes.*—The finder of a lost note has a good title against everyone except the loser, and if the finder transfers it to a person who takes it honestly, and for value, this transferee has a good title against all the world, even the loser. But the loser may always sue the finder. Notes found on premises not open to the public belong to the owner of the property, not the finder, but it has been held that notes found on the floor of a shop or on the customer's side of a bank counter belong to the finder, subject, in all cases, to the true owner's title. The loser of a note can claim a fresh note from the issuers by giving a full description of the note and a satisfactory indemnity. Destroyed notes can be similarly recovered.

In regard to bank-notes of £5 and over, before entertaining an application for payment, under indemnity, the Bank of England must be enabled to identify the notes in their books. If the evidence of destruction (in the case of notes alleged to have been destroyed) is conclusive, an application for payment will be considered at the expiration of *one year* from the date of the accident. A Statutory Declaration is then prepared by the Bank from the facts adduced and this Declaration, having been duly made by the person or persons concerned, has to be returned to the Bank with some substantial offer of indemnity, such as that of a London

banker. The same procedure is followed in the case of *lost* Bank of England notes, except that a period of *five years* is required to elapse in cases where no satisfactory evidence of destruction can be adduced. In regard to destroyed notes of £1 and 10s., the Bank of England will not entertain any claim unless satisfactory evidence of destruction, supported by fragments of the notes said to have been destroyed, is forthcoming. Claims should be made in person at the Bank of England by the applicant, or submitted through his bankers or the Post Office.

201. *Stolen Notes*.—The thief has no title, but a *bond fide* transferee for value gets a good title even against the true owner.

202. *Stopping Bank-notes*.—When notes of £5 or over have been lost or stolen, the loser may send a full description of the notes to the Bank of England with a request to "stop" the notes. It is the practice of the Bank to suspend payment of the notes after receiving notice of a stop, but the Bank is not entitled to refuse payment of the stolen or lost notes to a *bond fide* holder for value. In a case where a money changer honestly gave value for a note that had been stolen, it was held that he could recover the money from the issuing bank, even though it was proved that a printed list of stolen notes, this one among them, had been sent to him (*Raphael v. Bank of England*, 1855). The Courts are very jealous in preserving the negotiable character of negotiable instruments. As will be seen from the case just quoted, the only advantage of stopping a note lies in the value of the advertisement of the loss, and in any possible inquiries into the title of the presenter. (See Appendix for the regulations of the Bank of England.) Stops cannot be registered in respect of £1 and 10s. notes.

203. *Forged or Altered Notes*.—By the Bills of Exchange Act, 1882, s. 58 (3), a person who takes forged notes may recover their value from his transferor. The claim for recovery must, however, be made within a reasonable time. The wording of the sub-section is as follows: "A transferor by delivery who negotiates a bill thereby warrants to his immediate transferee being a holder for value that the bill is what it purports to be. . ." A bill in this sub-section includes a bank-note.

204. *Statute of Limitations*.—This statute has no application to bank-notes. No matter how long such a note remains in circulation, the issuing bank is not discharged from liability.

205. *Foreign Bank-notes*.—Banks treat these instruments as foreign bills and send them to London to be sold. It is not the

custom to affix revenue stamps to them when they are negotiated in this country. The practice of banks putting their name stamps on foreign notes for identification purposes is undesirable, as it may possibly affect the value of the notes when negotiated.

**206. Bankers' Drafts.**—A banker's draft means a draft payable to *order* on demand, drawn by or on behalf of a bank upon itself, whether payable at the Head Office or some other office of the bank. Until the passing of the Bills of Exchange Act (1882) Amendment Act in 1932, they could not be effectively crossed, but by the provisions of this Act, ss. 76 to 82 of the old Act of 1882 now apply as if such drafts were cheques. These drafts must not be made payable to *bearer* on demand, since then they would be equivalent to bank-notes, which by ss. 10, 11, Bank Charter Act, 1844, cannot be issued except by a bank of issue. The following is a specimen of a bank draft—

..... 19

£.... BRITISH BANK, LIMITED.  
*Hightown Branch.*

Pay ..... or Order  
the sum of .....

To the BRITISH BANK LIMITED,  
*Lombard Street,* ..... Manager.  
*London.* ..... Accountant.

Bank drafts payable to order on demand cannot be called cheques, since they are not "addressed by one person to another" (s. 3, Bills of Exchange Act, 1882)—the head office and the branches of a bank being one legal entity. By s. 5 (2), Bills of Exchange Act, 1882, since both the drawer and the drawee are the same person, the *holder*—not, it should be noted, the *banker*—has the option of treating it either as a bill of exchange or as a promissory note.

A banker paying one of these drafts in good faith under a forged indorsement is not protected by s. 60, Bills of Exchange Act, 1882, since he is not entitled to regard the document as a cheque, but, provided that it *purports* to be properly indorsed, he is protected by s. 19, Stamp Act, 1853, which says: "Provided always, that any draft or order drawn upon a banker for a sum of money payable to order on demand which shall, when presented for payment, purport to be indorsed by the person to whom the same shall be drawn payable, shall be a sufficient authority to such

banker to pay the amount of such draft or order to the bearer thereof; and it shall not be incumbent on such banker to prove that such indorsement, or any subsequent indorsement, was made by or under the direction or authority of the person to whom the said draft or order was or is made payable, either by the drawer or indorser thereof." This protection would probably extend to a draft drawn abroad on the head office in England, but it does not extend to a draft drawn at a tenor other than on demand, and to come within the scope of this section the document must be unconditional, drawn on a banker, payable to order on demand, and therefore fully negotiable. To obtain protection in case of need, the paying banker must see that it purports to be properly indorsed and that he pays it in good faith.

If a demand draft drawn on a bank by its own branch bears a forged indorsement, the person in possession of it cannot compel the banker to pay it. And this is so even if he has given value in good faith for the instrument. A bank should not, save when there is definite evidence of a forged indorsement, stop payment of a draft drawn by a branch on the head office or on another branch, as, in the absence of a forged indorsement, it would be liable on the draft to a *bona fide* holder.

All drafts issued by bankers are subject to the same stamp duties as are bills of exchange. But drafts or orders drawn by one banker in the United Kingdom upon any other banker in the United Kingdom, the same not being payable to bearer or to order, and used solely for the purpose of settling or clearing any account between such bankers, are exempt from stamp duty (Stamp Act, 1891, Exemption 2). These are known as "Bankers' Payments."

When a customer requests his banker to provide him with a banker's draft, the amount of which is to be debited to his account, he should either enclose with his written order a cheque covering the amount of the required draft, or should stamp the written order. Bank drafts drawn payable after date or after sight take the usual three days of grace, except those issued by the Bank of England on itself (as to which see next section).

**207. Bank Post Bills.**—These instruments were invented in 1738 as a preventive against the highway robberies then very prevalent. A smart highwayman who had stolen bank-notes could often cash them at the bank before the authorities had got wind of the affair. But Bank Post Bills, being usually payable at seven days after sight,

gave time for notification to the bank to stop payment. They carried no days of grace. As there is now no call for this class of instrument, they are no longer issued, and are merely mentioned as a matter of historical interest.

**208. Deposit Receipts.**—When a customer places money on deposit with a banker, a receipt is often given to him of which the following is a specimen :—

BRITISH BANK, LIMITED.	
Subscribed Capital £10,000,000.	Paid-up Capital £3,000,000.
Reserve Fund £3,000,000.	
Head Office : Lombard Street, E.C. 2	
No .....	OXFORD BRANCH.
£ .....	..... 19..
Received from .....	.....
.....	.....
the sum of .....	.....
.....	..... on Deposit Account.
For BRITISH BANK, LIMITED.	
Entered .....	..... Manager.

• Not transferable.

This Deposit Receipt is not transferable and is subject to seven days' notice of withdrawal.  
No interest will be allowed if the money is deposited for less than fourteen days, and interest will cease at expiration of notice of withdrawal.  
This Deposit Receipt must be given up on repayment of the amount.

This receipt is merely a written acknowledgment by the banker that he holds a certain sum to the use of the customer. The document is usually marked "Not transferable," and it is also not negotiable. The customer, therefore, by writing his name on the receipt and transferring it to another person for value, confers no legal right on the person to whom he gives it. But though a deposit receipt does not appear to be transferable by simple indorsement, the debt of which it is a memorandum may be duly assigned in the same way as any other debt, provided that due notice of the assignment is given to the banker. Nevertheless, the banker, before paying over the money to the assignee, is entitled to take into consideration any debt due to him by the depositor at the time he received notice of the assignment.

Interest on the deposit may be paid at certain periods at an agreed rate, or the rate may vary from time to time according to the rate allowed by the London joint stock banks. The latter rate generally varies according to the Bank Rate, and is fixed by agree-

ment amongst the Banks and duly advertised in the public Press.

Without the express written authorisation of the depositor, the banker should not pay away to a third party the sum represented by the deposit receipt. Even when he obtains the necessary written authority, the banker should ask for proof of identity before paying away the money. If he pays the money to the wrong person he cannot debit the depositor, but it would appear that if the depositor by his negligence leads the banker to believe that he is paying the right person, the banker might, in such circumstances, be entitled to debit the depositor. The banker issuing a deposit receipt should require the depositor's written authority before paying over the money to another banker, as he would in the case of any other third party. Presentation of the deposit receipt with the depositor's mere signature is not sufficient; the signature does "not purport to be an authority to the issuing banker to pay over the money" (*Evans v. National Provincial Bank of England*, 1897). It is nothing more than a receipt for the money, and the banker collecting a deposit receipt would be liable for conversion in case of fraud as he has no statutory protection whatever.

A deposit receipt has been held to be a good subject of a *donatio mortis causa*, i.e. a gift made in contemplation of death, and to take effect only in the event of death from the malady existing at the time the gift is made.

If the deposit receipt merely acknowledges the deposit of the money, the banker cannot demand its production before paying over the money. But if the form of the receipt is such that the signing of the receipt is a condition precedent to the withdrawal of the money, then the deposit receipt must be returned when the money is handed over. But the banker is not entitled to withhold payment of the money should the receipt be lost or destroyed. All that he can do is to ask the depositor for an indemnity.

An overdraft on current account can be safely allowed by the banker on the security of the deposit account before the receipt is actually returned to him—the banker being entitled to set off any overdraft on current account against money placed on deposit. If a deposit receipt is offered to the banker who issued it as a security for the account of a third party, or in support of the depositor's guarantee, the banker should obtain a memorandum of charge or a letter showing the object for which the receipt is lodged, and the receipt itself should be duly discharged by the depositor. Where

the receipt offered has been issued by another banker, the same procedure should be adopted, and, in addition, notice must be served on the issuing banker in the manner applicable to the assignment of an ordinary debt.

The form of cheque sometimes printed on the back of the deposit receipt has been held not to change the nature of the account, but to be merely a convenient method adopted by bankers to preserve evidence of the withdrawal of the money. If the deposit stands in the name of a man and his wife, the discharge of both is necessary. When receipts are issued in joint names it is desirable to have instructions as to withdrawals and rights of survivors indorsed on the receipts. For further information concerning deposit receipts in joint names, see *Joint Accounts*, p. 224.

There is another form of deposit receipt issued, generally, by foreign and colonial banks for "fixed" deposits. The money in these cases is deposited for definite periods, which vary and are usually from one to five years. The deposit is repayable or renewable on the expiration of the agreed period. The interest may be payable half-yearly, yearly, or when the principal is due to be repaid.

209. *Stamp*.—Deposit receipts given by a banker do not require stamping, but the receipt given by the depositor on withdrawal is liable to the usual receipt stamp duty if for £2 or over. When an increase is made on the amount deposited, a new receipt should be given and the old one discharged, the usual practice being to ask the depositor to write on the back of the old receipt "Amount increased £200, John Smith," but not to sign the receipt. If the receipt is signed, the usual receipt stamp must be affixed for £2 or over. If the amount is to be transferred to current account an indorsement, "Transferred to current a/c, John Smith," without a stamp, would be sufficient. If interest is paid either by a form of receipt or a form of cheque, the appropriate stamp is necessary.

210. **Letters of Credit**.—There are various kinds of these instruments. One kind is a letter addressed by one banker to another requesting the banker to whom the letter is addressed to hold at the disposal of a named third party a specified amount of money, and to charge the issuing banker with the total amount of all cheques honoured or payments made on the authority of the letter.

Another kind of Letter of Credit authorises the person named in the Letter to draw bills on the issuing banker at the tenor and up to the amount stated in the Letter, the issuing banker on his

part promising to accept all bills drawn in accordance with his instructions. This kind of Letter of Credit is usually issued for a specified period, generally not longer than six months. If the Letter undertakes the acceptance of bills without conditions, it is termed an "Open" or "Clean" Letter of Credit. If the promise to accept is a conditional one, viz., that the document of title to the goods in respect of which the bills are drawn shall be sent to the issuing bank together with the bills for acceptance, the letter is called a Documentary Letter of Credit. The usual document of title is a bill of lading, and to this are attached the invoice and the marine insurance.

Both these kinds of Letters of Credit contain a stipulation that the amount of all cheques or bills drawn under them shall be indorsed upon them, so that the Letters always show how much of the credit remains available.

Another kind is called a Marginal Letter of Credit, and is so named because on the margin of the actual bill form to be used is a letter detailing the terms of drawing and acceptance. This letter must not be detached from the bill portion of the document.

The banker who issues or grants a Letter of Credit is termed the *grantor*, while the person in whose favour it is granted is called the *grantee* or beneficiary. Letters of credit are not negotiable and also not transferable.

Specimen forms of a Clean Letter and a Documentary Letter are appended. Two are addressed direct to the beneficiary and one to another bank.

CLEAN LETTER OF CREDIT.

No. 110. .... Bank,  
London.  
Date ....

To .....

DEAR SIR,

You are hereby authorised to draw drafts upon this bank at ninety days' sight to the extent in all of £5,000, say Five thousand pounds, and we hereby engage with the drawers, indorsers, and *bond fide* holders of all drafts drawn under and in compliance with the terms of this Credit, that the same shall be duly accepted payable in London, England, on presentation in order, and that they shall be duly honoured on presentation in order at maturity.

This credit will remain in force for six months from this date. The particulars of all drafts drawn against it must be indorsed on the back hereof, and the bills must specify that they are drawn under Credit No. 110, of the ..... day of ..... 19 .

We are,

Yours faithfully,

..... Bank, Ltd.

## DOCUMENTARY LETTER OF CREDIT.

..... Bank,  
London,  
Date....

To.....  
.....

Confirmed Credit No.

DEAR SIRS,

We have been requested to confirm to you that for account of ..... we have opened a credit in your favour for the sum of £..... (say ..... ) available for ..... drafts on us to be accompanied by the following documents:—

- (1) Full set clean "on board" Bills of Lading  
(in name of .....).
- (2) Invoice.
- (3) Certificate of Origin.
- (4) Marine and War Risk Insurance Policies.
- (5) Consular Invoice .....
- (6) ..... covering a shipment(s) of ..... at a price of ..... shipped from ..... per Steamship ..... to ..... before .....

We undertake to honour all drafts drawn within the terms of the above credit, provided such drafts bear the number and date of this credit.

We are, etc.,  
..... Bank, Ltd.

..... Bank, Ltd.,  
London,  
Date....

No. 130.

£.

To ..... Bank.

.....

DEAR SIRS,

You are hereby authorised to negotiate (exchange and all charges payable at ..... ) within a period of six months from date hereof, the draft or drafts drawn by ..... of ..... on ..... of ..... drawn at ..... days' sight, payable in London, and not exceeding in the aggregate the sum of ..... for ..... per cent. of the Invoice cost of ..... shipped to ..... and consigned to ....., provided such draft or drafts are accompanied by signed Invoices of the shipments against which they are drawn and by the relative Bills of Lading and Marine Insurance Policies or Certificates, indorsed in blank.

Please note that all drafts drawn against this Credit must state on their face that they are drawn under Credit No. 130, of the ..... day of ..... 19

We hereby engage, etc.,

We are, etc.,  
..... Bank, Ltd.

When the terms are confirmed to the beneficiary, it is termed a "Confirmed Banker's Credit," and when once the beneficiary has received confirmation, the credit is irrevocable, except with his consent.

If a credit is so worded that the amount for which it is available automatically reverts to the original amount, it is termed a "Revolving Credit," that is to say, it may, *e.g.*, authorise the drawing of drafts up to a limit of £1,000 outstanding at any one time, in which case, as soon as the drafts have run off, the credit becomes available again, until cancelled, or until the date of expiration. Such credits are also termed "Running Credits." The credits we have been describing are used in commerce, and are therefore frequently called "Commercial Credits."

Letters of Credit are very useful instruments in facilitating commercial relations between, say, an importer here and a merchant abroad, or in financing the shipment of merchandise from one foreign country to another. The importer, for instance, gets his banker to issue a Letter of Credit undertaking to accept bills up to a certain amount drawn by the merchant abroad. Seeing that the credit of the importer is reinforced by the credit of the bank, the foreign merchant is in no doubt about receiving payment for the goods he exports. Moreover, he himself is able to use the Letter in order to get the bills negotiated or discounted, and so obtain payment for his produce, or in getting credit for the purchase of the produce shipped.

Letters of Credit for home use are subject to the *ad valorem* stamp duty of bills of exchange payable at more than three days after date or sight (Stamp Act, 1891, s. 32), but Letters for use abroad are exempt (Stamp Act, 1891, sch. I, Ex. 4).

**211. Circular Letters of Credit and Circular Notes.**—These are forms of Letters of Credit issued to the grantor-banker's foreign correspondents and agents generally, authorising them to pay to the person specified the sum for which each Circular Note is drawn or to honour drafts up to the limit of amount fixed in the Circular Letter. They are issued for the convenience of persons travelling abroad. It is usual for Circular Letters of Credit and Circular Notes to be paid for at the time they are obtained from the issuing banker by an amount equal to the face value of the Notes and the limit of the Letter of Credit. A small commission is sometimes charged, though, if the amount of the credit be substantial, the issuing banker may look for his remuneration to the interest which will be earned on the amount outstanding under the credit.

## ELEMENTARY BANKING

## CIRCULAR LETTER OF CREDIT.

Not available after ..... 19 .

No ..... Bank,  
 £. London,  
 Date.

## GENTLEMEN,

This letter will introduce to you ..... to whom you will please furnish such funds as ..... may require up to the aggregate amount of ..... pounds sterling against sight drafts drawn on this office, which please negotiate at your buying rate for bankers' cheques on London. Each draft must be plainly marked as drawn under this Letter of Credit No. .... and must be signed in accordance with the specimen signature which is on our Letter of Indication of the same number to be produced herewith.

We engage that such drafts shall meet with due honour if negotiated within ..... months from this date.

The amount of each draft must be inscribed on the back of this letter. This letter must be cancelled and attached to the last draft drawn.

We are, Gentlemen,  
 Your obedient Servants,

To Messieurs the Bankers mentioned in the Letter of Indication which must be produced herewith.

N.B.—The bearer, for purposes of security, is requested to carry this Letter of Credit apart from the Letter of Indication.

The reverse side of the Letter of Credit is as follows—

DATE.	BY WHOM PAID.	AMOUNT PAID.	AMOUNT IN FIGURES
-------	---------------	--------------	-------------------

## LETTER OF INDICATION.

(To accompany Circular Letter of Credit.)

No. ..... Bank,  
 London,  
 Date.

To Messieurs the Bankers mentioned in this Letter of Indication

## GENTLEMEN,

The bearer of this letter is ..... in whose favour we have issued our Letter of Credit No. .... Recomending ..... to your attention and referring you to the specimen signature below,

We are, Gentlemen,  
 Your obedient Servants,

## Specimen signature

N.B.—This letter should be retained by the holder until the relative Circular Letter of Credit is exhausted, when it must be surrendered to the banker making the last payment.

## CIRCULAR NOTE.

..... Bank,  
London,  
Date.

No. Circular Note for Ten Pounds. £10.

GENTLEMEN,

This note will be presented to you by ..... whose signature you will find in our Letter of Indication No. ..... to be produced herewith. We request you to pay to ..... order the value of Ten pounds at the current rate of exchange.

We are, Gentlemen,  
Your obedient Servants,

.....

To Messieurs the Bankers mentioned in our Letter of Indication to be produced herewith.

On the reverse side is—

£10. At sight pay to the order of ..... Ten pounds value received at ..... this day of ..... 19 .....  
(Signature) .....

LETTER OF INDICATION.  
(To accompany Circular Note.)

..... Bank,  
London,  
Date.

No.  
To Messieurs the Bankers mentioned in this  
Letter of Indication.

GENTLEMEN,

The bearer of this Letter is ..... who is furnished with our Circular Notes numbered ..... payable at our Head office, London.

We request you to purchase any of these notes presented to you for payment at the current rate of exchange for sight drafts on London, on their being indorsed in your presence in accordance with the specimen signature given below.

This Letter of Indication should be retained by the holder until all the Notes have been cashed, when it must be surrendered to the banker cashing the last note.

We are, Gentlemen,  
Your obedient Servants,

.....

Specimen Signature.  
.....

N.B.—The bearer, for his greater security, is requested to carry this Letter of Indication apart from the Circular Notes.

When Circular Notes or Letters are issued, a separate Letter of Indication is given to the grantee. As will be seen from the

form above, it contains a specimen of the grantee's signature. It also has a list of the grantor-banker's foreign correspondents and agents.

It is essential, when use is made of the Circular Letter or Notes, that the grantee should hand the Letter of Indication—which for his protection should be kept separate from the Circular Letter or Notes—to the cashing banker. The cashing banker, before parting with any money should carefully examine the grantee's signature on the draft or on the back of the Circular Note to see that it tallies with the signature of the Letter of Indication. Moreover, to prevent fraud, the cashing banker should insist on the draft or note being signed in his presence.

The cashing banker cashes these drafts or notes in local currency at the buying rate for sight bills on London; that is to say, he exchanges them at the current rate at which he is prepared to purchase sight bills drawn payable in London. In some cases a small commission is charged, but, as a rule, the cashing banker makes his profit on the transaction in the rate of exchange.

Examination of the specimen Circular Letter will show that the drafts to be honoured must plainly indicate that they are drawn under Letter of Credit numbered so-and-so. Each draft so drawn must be entered on the back of the Circular Letter, from which the banker will see the amount for which the credit is still available. The Circular Notes—which bear consecutive numbers—must be signed on the back by the grantee when presenting them for payment. The agent or correspondent who cashes the draft which exhausts the limit under the Circular Letter should cancel the Circular Letter, and when cashing the last Circular Note should cancel the Letter of Indication. All the documents must be returned to the issuing bank.

The value of Circular Notes not used by the grantee will be credited to him on his surrendering them to the grantor-banker, together with the Letter of Indication; so will any balance of the Circular Letter not used. But if he loses any of the Circular Notes the grantor-banker requires a satisfactory indemnity before he will give credit for them.

Circular Letters of Credit for use abroad are exempt from stamp duty, but the drafts drawn under their authority are subject to the usual duties of foreign bills of exchange. Circular Notes are also exempt, but the drafts on the back must be stamped as bills of exchange.

**212. "Acceptances and Indorsements on behalf of Customers."**

—In the balance sheet of a London bank there appears on the liabilities side an item, "Acceptances and Indorsements on account of Customers." This item represents the bills outstanding which have been accepted by the bank on behalf of its customers. A large proportion of these bills are drawn under Letters of Credit to meet liabilities due abroad. In some cases security is deposited as cover, while in others the credits are documentary, so that the banker gets the documents of title to the goods as security for the bills. If the customer does not provide for the bills, the banker must nevertheless pay them, and it is on account of the banker's liability on the one hand, and his customer's liability to him on the other hand, that the item, "Liabilities of customers on Acceptances and Indorsements," appears on both sides of the banker's balance sheet; one entry showing his liability to the public, which is contingent and only arises if the customer fails to keep his engagement, and the *contra* entry showing the customer's liability to the banker.

In regard to Indorsements, when a banker sells a foreign bill that he has bought from (*i.e.* negotiated for) a customer, the banker shows his liability to the purchasing bank, and his customer's liability to him, by contra entries, which are often included for balance sheet purposes with the acceptances (see also p. 187). Sometimes there is an addition of guarantees, etc., which cover all other engagements a banker may have undertaken on behalf of his customer.

## CHAPTER XIV

### POSTAL ORDERS—CASH ORDERS—CONDITIONAL ORDERS TO PAY—DOCUMENTS IN FORM OF RECEIPTS —DIVIDEND WARRANTS—INTEREST WARRANTS— COUPONS—DRAWN BONDS

**213. Postal Orders.**—Postal Orders and Money Orders are not cheques, since they are drawn by a Post Office on the Postmaster-General or on another Post Office. They are, therefore, outside the protection of the Bills of Exchange Act. They are also expressly marked "Not Negotiable." Moreover, "if an order is lost or stolen, no person into whose hands it may fall, though himself innocent, is entitled to receive the amount of the order. The rightful owner is alone entitled to cash the order" (*Post Office Guide*). But bankers collecting these instruments for their customers are specially protected against the true owner by the Post Office Act, 1908, s. 25, which says provided that "any banker . . . who in collecting in that capacity for any principal, shall have received payment . . . in respect of any money order, or of any document purporting to be a postal order, shall not incur liability to anyone except that principal by reason of having received its payment. . . ." But as bankers usually do not merely *collect* such instruments for their customers, but credit them as cash, they lose the protection of this section, and should the orders prove to have been stolen, the banker, if his right of recourse against his customer should prove worthless, would be liable in an action for conversion.

By the Post Office (Money Orders) Act, 1883, Sch. I, if the orders are crossed generally they will only be paid through a bank, and if crossed specially, only through the banker to whom they are crossed. When presented for payment by a banker, the payee need not have filled in his name in the stipulated place, or have signed the receipt at the foot of the order, provided that the name of the presenting bank is stamped on the face of the order. The present-

ing banker, however, usually insists upon the payee writing or stamping his name on the face of the order. All orders are payable at the G.P.O., London, as well as at the place, if any, mentioned on the face of the order.

The Court of Appeal case, *London & Provincial Bank v. Golding*, emphasises a danger to bankers when collecting Postal Orders and Post Office Money Orders. As shown before, the Post Office will pay over the proceeds of these documents with a commendable lack of formality, but the Post Office Regulations permit the Post Office to return the orders to the presenting bank, if at any time later it be found that there is any irregularity, and the bank must refund the money. It must, therefore, be noted that the encashment of these orders for a banker is provisional only (see *J. Inst. Bankers*, May, 1918, pp. 136-7).

**214. Cash Orders.**—Cash orders are drafts payable on demand, usually drawn by wholesale firms upon their retail customers. As these drafts involve presentation to the drawee by the collecting bank, it is the practice both in London and the provinces for bankers to discourage the drawing of these drafts, and in many cases to refuse to collect them.

**215. Conditional Orders to Pay.**—No document can be called a cheque unless it is "an unconditional order in writing" (s. 3, Bills of Exchange Act, 1882). Hence, any document in the form of a cheque that contains a condition attached to the order to pay cannot be a cheque. Such documents are not negotiable, and possibly not even transferable. As a matter of practice, however, these documents are passed through accounts other than that of the payee.

The following will serve as an example of one of these documents—

No. .... *Northtown, 1st March, 1930.*

THE BRITISH BANK, LTD.,

*Northtown.*

Pay *Henry Jones* ..... or Order the sum named below on the receipt being duly stamped, signed and dated.

£10.

*John Smith & Co.*

Received from *John Smith & Co.* the sum of *ten pounds* as per particulars furnished.

*Henry Jones.*

Stamp if  
over £2

Date. *3rd March, 1930.*

This cheque requires Indorsement.

Such a wording undoubtedly expresses a condition precedent to payment, and the document, therefore, cannot be regarded as a cheque and subject to the provisions of the Bills of Exchange Act. But if the order to pay is worded as in an ordinary cheque, and yet there are stipulations on the document which do not occur on an ordinary cheque, the position is not so clear.

The true test is whether a conditional statement is addressed to the paying banker, or is merely a matter between the payee and the drawer. For example, many documents in the form of a cheque, purporting to be payable to order, bear a statement that the receipt form must be signed, and that no further indorsement is required. This, it might be argued, is addressed to the payee, but even if that be so, the paying banker could not safely allow the direction to be ignored by the payee, and should he do so, he might be under some liability to the drawer. When the document has a receipt form printed on it, but contains no stipulation as to the signing of the receipt, it has been argued that this does not make the document conditional. Nevertheless, if the payee did not sign the receipt form, the paying banker would be in a difficulty.

In Sir John Paget's opinion, the paying and collecting bankers lose the benefit of the protective sections when the payee's only discharge consists of a signature to a receipt. If, however, the document is unconditional, and a cheque, and there is a plain indorsement in addition to a signature to a receipt, then the banker would be protected should the indorsement prove to be forged. But, unless there is a separate indorsement, the banker is not protected merely because the cheque bears on it a statement that the signature of the receipt is intended to operate as an indorsement or that no further indorsement is required.

The receipts on these documents must be duly stamped as receipts, and the order also requires the same stamp as a cheque, except when exempted by statute. Whether the receipt is on the face or back of the document, if it is payable to order, the payee must also indorse the document.

216. *The Paying Banker.*—It does not appear whence the paying banker is to get his protection should he pay a conditional document bearing a forged indorsement. The sections protecting a paying banker are s. 60, Bills of Exchange Act, 1882, and s. 19, Stamp Act, 1853. S. 60 refers to bills payable on demand and drawn on a banker, *i.e.* cheques; s. 19 refers to any "draft or order drawn on a banker payable to order on demand." Both

these kinds of instrument are by their nature negotiable and transferable, but conditional orders to pay are not negotiable, and though purporting to be payable to order, do not appear even to be transferable.

Section 17, Revenue Act, 1883, extends the crossed cheques sections (ss. 76-82, Bills of Exchange Act, 1882) to these documents, but s. 17 expressly provides that nothing in the Revenue Act "shall be deemed to render any such document a negotiable instrument." Payment over the counter under a forged indorsement or to a presenter having no title would undoubtedly be no payment so far as the true owner is concerned. Moreover, the banker who pays a conditional document which has been crossed and bears evidence of having been transferred, may lose the protection of s. 80, Bills of Exchange Act, 1882, on the ground of negligence, even though he may have paid in accordance with the crossing. To sum up, since these documents, whether crossed or uncrossed, place the paying banker in a very dubious position, they should, as far as possible, be discouraged, and, when they are issued, should be covered by a satisfactory indemnity from the drawers.

**217. The Collecting Banker.**—Since these conditional documents are not negotiable, they should, strictly speaking, be collected only for the payee named in them, and if collected for other persons the banker probably stands to lose the protection of s. 82, Bills of Exchange Act, 1882. Neither would it appear that the banker who credits such documents as cash is protected by the Bills of Exchange (Crossed Cheques) Act, 1906, since there is nothing in the Act which implies that it refers to any documents other than cheques proper as defined in the Bills of Exchange Act, 1882. In practice, however, bankers frequently collect these documents for reputable customers who are not the named payees.

**218. Documents in Form of Receipts.**—Another form of document is a mere receipt, with a note to the effect that on presentation (usually within a prescribed limit of time) of the form through a named bank, with the receipt properly signed, the amount stated will be paid. It appears probable that these documents come within s. 17, Revenue Act, 1883, and may therefore be validly crossed, but the banker has no protection if he pays under a forged signature, or if he pays to any person but the rightful party.

In regard to stamp duty, the form would appear to come within the wide definition of a bill of exchange given in s. 32 of the Stamp Act, 1891 (see p. 158), and would, therefore, require the same stamp as a

cheque, since it is a document entitling the recipient to a sum of money. In any case a receipt stamp is necessary when the amount is £2 or over. If the paying banker is furnished with a list of payments to be made, a twopenny stamp must be placed on the list for each payment. The banker who is asked to pay these documents should get a satisfactory indemnity.

The following is an example of these documents :

RECEIVED of ..... the sum of ..... by payment of  
THE BRITISH BANK LTD., Northtown, for .....

Signature	Stamp if
Date	over £2.

A large number of these documents are issued payable by the Paymaster General in connection with the payment of pensions, etc. They are crossed and must be presented through a banker to the office of the Paymaster General.

**219. Dividend Warrants.**—A dividend warrant is a draft issued by a company directing its bankers to pay to a named member of the company his share of the divisible profits. A dividend warrant may be validly crossed by virtue of s. 95, Bills of Exchange Act, 1882, which says that “the provisions of this Act as to crossed cheques shall apply to a warrant for payment of dividend.” If the dividend warrants are crossed, the bank on which they are drawn can refuse payment over the counter (see s. 79 (2), Bills of Exchange Act, 1882).

Those dividend warrants which are drawn in proper cheque form are to be treated like ordinary cheques, but to those drawn in any other form, the provisions regarding cheques do not apply. In a case tried in 1910, the judge expressed the view, though doubtfully, that a statement at the bottom of a dividend warrant, that payment on presentation after three months would not be made without the secretary's indorsement, did not make the document other than a cheque; but, as this was not the point at issue, the learned judge's dictum must not be taken as final. If payable to order or to bearer, it is probable that their negotiability could be upheld on the ground of mercantile custom, provided, of course, that there was nothing on the face of the document precluding negotiability. Since the question of negotiability has not yet been settled, it behoves the collecting banker, for his protection,

not, without sufficient reason, to collect these documents for persons other than the payees. Crediting as cash will deprive the collecting banker of the protection of s. 82, Bills of Exchange Act, 1882, since it does not appear that the 1906 Act covers dividend warrants unless they are cheques. The paying banker also will lose the protection of s. 60 unless the dividend warrant is in proper cheque form ; neither will s. 19, Stamp Act, 1853, help him if the document is a conditional one. If the warrants are crossed, the paying banker is protected by s. 80, Bills of Exchange Act, 1882, by virtue of s. 95 of the same Act.

Dividend warrants must be signed by the person to whom they are made payable. A *per pro.* signature for an individual payee is not valid, unless the form of procuration has been submitted to and approved by the issuers of the warrant. An authority to sign and indorse cheques does not imply an authority to discharge dividend warrants. By mercantile custom dividend warrants payable to joint payees are discharged by the signature of any one of them, and this practice would probably be upheld in a court of law.

Where there is a special place on the dividend warrant for the signature, the proprietor should sign in that place, and in no other. A signature is required, even though, as is not uncommon, such warrants are made payable to the payee or bearer. All dividend warrants are subject to the same stamp duty as cheques. If there is also a form of receipt, this must be duly stamped, if for £2 or over.

Many shareholders prefer to have their dividends paid direct to their bankers. The issuers also, in many cases, prefer this method, and it is not uncommon for shareholders to receive a circular suggesting this procedure and enclosing the necessary form. If the dividends are paid direct to the banker, he must discharge the warrant in the manner required, and if there is a receipt form to be signed, he must use a receipt stamp for £2 and over. The relative counterfoils should be sent to the holder of the shares.

**220. Interest Warrants.**—Interest warrants are drafts for the payment of the fixed interest due on Government stocks, debentures, etc. Unlike dividend warrants, when payable to joint payees, the signatures of all are required for the discharge of the interest warrant. They can be validly crossed by virtue of s. 17, Revenue Act, 1883. *Per pro.* indorsements are not accepted, except in cases

where a *per pro.* indorsement is the only possible one, as *e.g.*, where the payee is a limited company, or, again, where the interest warrant is paid direct to the payee's bank. S. 95 and s. 97 (d), Bills of Exchange Act, 1882, apparently do not apply to interest warrants, since they are not specifically mentioned. (See Note, p. 202.)

The following is a specimen of an interest warrant:—

—Div. 1. INDIA 7 % STOCK, 1926-1931.									
WARRANT FOR INTEREST DUE 5TH OCTOBER, 1930.									
To the CASHIERS OF THE BANK OF ENGLAND.									
CAPITAL.		Interest @ £3 $\frac{1}{4}$ % due 5th October, 1922		Less Income Tax @ 6/- per £		NET DIVIDEND.			
£100	— Co: Not negotiable	£3	10	—	17	6	£2	12	6
Pay to the Order of <i>Edith Mary Smith</i> , .....									
Two Pounds, twelve shillings and sixpence .....									

F. ARNOLD,

*Chief Accountant.*

The Payee named above must sign here .....

Warrants outstanding more than SIX MONTHS after date must be sent to the Bank of England for verification.

N.B. CHANGE OF ADDRESS should be notified to the Chief Accountant IMMEDIATELY, together with particulars of all accounts in which the name of the payee appears.

In regard to the above specimen, the reader will observe that it is crossed "not negotiable" and that this crossing is inserted in a manner which invites its being overlooked. Crossings should be right across the face of the instrument.

**221. Coupons.**—Coupons are detachable certificates for the payment of interest on bonds, debentures, etc. They are issued in sheets, each separate coupon being numbered with the same number as the relative bond or certificate, and also with a number indicating the order in which it is to be detached for payment. For example, "Debenture No. 120. Interest Coupon No. 9." The place of payment is also indicated on the coupon. Each coupon entitles

the holder to interest for a certain period, usually six months, and, when due, is cut off and presented for payment. The dates of payment are generally stated on the coupons, but where no date is given it is duly announced in the public Press. Coupons falling due on a Sunday or a Bank Holiday are payable on the succeeding business day. Full particulars of all coupons entrusted to a banker for collection should be entered in a Coupon Book and the dates of payment in a diary.

Customers should not be credited with the value of coupons on foreign bonds presented for payment until the banker has received advices of the net amounts realised. These cannot readily be calculated beforehand owing to differences in income-tax deductions, and, in some cases, the fluctuations of the rate of exchange. In regard to coupons payable, at the holder's option, in this country or abroad, they should either be collected from the issuer's agents in London or sold for presentation at the foreign centre at which they are also payable, whichever the owner may determine to do. His decision will be influenced by the prevailing rate of exchange.

Notice of lost coupons should be sent to the paying bankers, but they cannot stop payment on presentation, though, naturally, before paying them after receipt of a "stop," they would make inquiries into the title of the presenter. Coupons attached to and issued with any marketable security do not require stamping (Finance Act, 1894, s. 40, and Stamp Act, 1891, Sch. I, Ex. 11). Coupons held by a country banker for collection should be sent *uncrossed* to the Head Office or London Agent fourteen days or so before the date of payment. The coupons for each different series should be carefully sorted numerically, and listed on a separate slip.

The following will serve as examples of coupons :—

UNITED STATES OF BRAZIL

17

5 % FUNDING BONDS, 1914.

112137

112137

For £0 5 0, being three months' interest on 1st Nov., 1930.  
£20, payable in London at Messrs N. M. Rothschild  
& Sons, in Paris, Amsterdam, Brussels or Hamburg,  
at the exchange of the day on London. £0 5 0

THE GRAND TRUNK PACIFIC  
BRANCH LINES COY.

On the first day of  
Nov., 1930.

Will pay to the bearer at its Office or Agency in  
the City of London, England. Being six months'  
interest then due on its Four per cent. First  
Mortgage Sterling Bond. Due 1939 (Alberta  
Lines). Guaranteed by the Government of the  
Province of Alberta.

£4 0 0

No. A 1798  
Coupon No. 25.

.....*Treasurer.*

Payable at \$19.44 in Montreal in Canadian Curr. or in New York in  
U.S.A. Gold Coin.

**222. Drawn Bonds.**—These are bonds redeemable by drawings at a named price, the numbers of the bonds drawn being advertised in certain newspapers. The bonds are often left with a banker, not only for the purpose of cutting off the coupons, but to present the bonds for payment, if and when the number of the bond appears in the advertised list of those drawn. Should the holder of the bond overlook the drawing, the fact is brought to his notice, as a general rule, by the issuers refusing payment of the relative coupon when it is presented for payment. But some issuers—as did the Russian Government—have made it their practice to continue paying the coupons of a drawn bond, not as interest on the bond, but as deductions of the capital value of the bond. Accordingly, when the bond is actually presented for payment the holder may find his capital depleted by the value of the coupons paid since the drawing, and the banker, if the bond has been left in his charge, and the date of drawing overlooked by him, would probably incur liability to his customer.

*Note* (see p. 200).—The authorities formerly considered that interest warrants must be distinguished from dividend warrants (which are for distributing a share in profits), but in the case of *Slingsby v. Westminster Bank*, 1930, it was held that there was no distinction, and that s. 95 applied. This seems a very reasonable decision, as it is difficult to see what ground there is for making any distinction.

## CHAPTER XV

### BANKER AND CUSTOMER

**223. Definition of a Customer.**—As with the term “banker” there is no statutory definition to guide us. From the decided cases bearing on the point, it would appear that a customer of a banker should be defined as a person who keeps an account, current or deposit, with a banker. The judicial decisions show that if a banker renders to a person services incidental to, but not peculiar to the business of banking, he does not thereby constitute that person a customer in the legal sense. Thus, a person who has no account, but who has been in the habit of getting cheques exchanged, is not a customer within the meaning of s. 82 of the Bills of Exchange Act, 1882. The matter is one of great importance to the banker, the reason for which is explained elsewhere (see p. 105). Doubts have been raised from time to time whether the first transaction, as, for example, the payment in made by John Smith (see p. 16) constituted John Smith a customer, but in a recent case it was stated that a person whose money has been accepted by a bank on the understanding that it undertakes to honour cheques against it, is a “customer” of the bank, whether his connection is of long or short standing. It seems clear, therefore, that a person becomes a “customer” immediately his account has been opened, even though the cheque with which he has opened it is still uncleared.

**224. Relation of Banker and Customer.**—When a banker receives money from his customer, he does not hold the money as a trustee for the customer. The money really is lent to the banker. The following extract taken from the judgment in an old case explains admirably the position. “Money, when paid into a bank, ceases altogether to be the money of the principal; it is then the money of the banker, who is bound to return an equivalent by paying a similar sum to that deposited with him when he is asked for it. The

money paid into the banker's is money known by the principal to be placed there for the purpose of being under the control of the banker ; it is then the banker's money ; he is known to deal with it as his own ; he makes what profit he can, which profit he retains to himself, paying back only the principal, according to the custom of bankers in some places, or the principal and a small rate of interest, according to the custom of bankers in other places. The money placed in the custody of a banker is, to all intents and purposes, the money of the banker, to do with it as he pleases ; he is guilty of no breach of trust in employing it ; he is not answerable to the principal if he puts it in jeopardy, if he engages in a hazardous speculation ; he is not bound to keep it or deal with it as the property of his principal ; but he is, of course, answerable for the amount, because he has contracted, having received that money, to repay to the principal, when demanded, a sum equivalent to that paid into his hands. That has been the subject of discussion in various cases, and that has been established to be the relative situation of banker and customer. That being established to be the relative situations of banker and customer, the banker is not an agent or factor, but he is a debtor."

Accordingly, the basic relationship between a banker and his customer is that of debtor and creditor, the banker being the debtor when the customer has a credit balance, and the customer the creditor. When the customer has overdrawn his account, the positions are reversed.

In addition, however, to the relationship of debtor and creditor, the nature of a banking business imposes certain mutual obligations on both the banker and the customer. In the first place, the banker is bound to honour his customer's cheques, provided that (1) they are drawn in proper form ; (2) he has funds belonging to his customer sufficient to pay them ; (3) there is no legal cause making such funds, though sufficient, not available for the purpose. Secondly, the transactions between banker and customer are regarded as being of a peculiarly private character, and therefore the banker must not divulge to third parties the state of his customer's account, except when called upon to do so by a court of law, or at his customer's request.

As regards the customer, he must exercise reasonable care in drawing his cheques so as to prevent the banker being misled. That is to say, the cheques must be clear and free from ambiguity, and must not be drawn in a manner which facilitates fraud. Further-

more, they must be drawn on the branch at which the account is kept, and the banker is not to be required to pay them out of the usual banking hours. Finally, it would appear that a demand for repayment on the part of the customer is a necessary precedent to a right to sue for the amount.

From the above it is clear that although the relationship of debtor and creditor is the basic relationship of banker and customer, there are several very important modifications. In the case of an ordinary debtor he is bound in law to seek out his creditor and pay his debt, but to apply this rule to a banker would be absurd.

As we shall see later, the various services rendered by the modern banker to his customer introduce further special characteristics in their relations.

**225. Working of the Account.**—*Payments in.*—As we have already seen, Smith was given a paying in slip book which he will use when he has amounts to pay in to his credit. In the case of private accounts, *i.e.* accounts of persons not engaged in business, it is very usual for such customers to call at the bank and make out a slip at the counter, or to send their remittances by post. All remittances received by post should be promptly acknowledged. If received from a third party to whom an acknowledgment is sent, a receipt stamp must be placed on the acknowledgment, if the amount is for £2 or over. But an acknowledgment sent to a customer covering a remittance received from him for his credit is exempted, as it comes within the clause of the Stamp Act, 1891, which reads “a receipt given for money deposited in any bank or with any banker to be accounted for, and expressed to be received of the person to whom the same is to be accounted for.” A letter sent to a customer stating that a certain sum has been lodged to his credit by a third party does not require to be stamped with a receipt stamp.

Acknowledgments sent to a customer respecting amounts paid in by a third party should state the nature of the items making up the credits, *i.e.* cash, country cheques, etc. Alterations in a paying-in slip should be initialled by the customer concerned, or by his authorised deputy. It is important to see that the date of the slip corresponds with the actual date of paying in.

As we have shown in the chapter on the Clearing System, the amounts of cheques paid into a customer's account cannot always be received by his banker from the banker upon whom they are drawn on the day they are paid in. In practice, however, it is

usual to credit the customer's account with an amount paid in at once, even though all or part of it may consist of "uncleared" cheques. The term "uncleared" is applied to those cheques and bills for which the collecting banker has not yet received the money. The following illustration will explain the effect of crediting uncleared items as cash. If banker A of Bristol credits his customer on a Monday with a cheque drawn on banker B of Birmingham and banker A sends the cheque to London in the usual way for presentation through the Clearing House, he will not receive credit in London for the amount until Wednesday. If, therefore, the customer cashes a cheque against the amount before Wednesday, he is having in effect an overdraft.

Although an uncleared cheque may have been credited at once as cash to a customer's account, the banker is fully entitled to debit the account should the cheque be subsequently dishonoured on presentation in the usual way.

Credits posted in error and advised to the customer, either by an entry in his pass book or by communicating the resulting balance, may, in certain circumstances, be rectified by the banker, but he must not dishonour any cheques drawn innocently and in good faith by the customer in reliance upon what he has been given to understand was his credit balance.

226. *Appropriation of Payments*.—A customer may pay in to meet certain cheques and bills, and provided the amounts are sufficient, the banker is obliged to use the credit to meet the cheques or bills specified, irrespective of the state of the customer's account. This is because the law allows a person paying money to decide to which debt (if he owes more than one) it shall go. If he does not do so, then the creditor has the right to elect to which debt the payment shall go, and may apply it even to a debt barred by the Statute of Limitations. As soon as the creditor's decision is notified to the debtor, it becomes irrevocable. But, in the general way, no special appropriations—as such arrangements are called—are made in connection with a current account, and the law provides an appropriation by what is known as the *Rule in Clayton's Case*. According to this Rule, it is the first item on the debit side which is discharged or reduced by the first item on the credit side. In other words, it is the money first paid which is the first drawn out.

This Rule has often a very important bearing on current accounts, particularly if they are overdrawn, and when a banker wishes to

prevent its application, he must break, *i.e.* stop, the account, and, if possible, get the customer's written consent to the opening of a new and distinct account, through which all future transactions will be passed. The Rule will then have no effect on the old stopped account, as the Rule is only effective if the account is running.

The following example will make clear the effect of the Rule in Clayton's Case and its importance to bankers. Suppose that a guarantor dies at the time when the person whose current account he has guaranteed is overdrawn £2,000. If the account be continued unbroken after the guarantor's death, all future payments in will go to reduce the £2,000 debit balance existing at the time of the guarantor's death, and all payments out will constitute a new debt unsecured by the guaranteee. Thus, if the customer pays into the unbroken account £2,000 and draws £1,000, the effect of the Rule will be that the debt covered by the guarantee is wiped out, and the customer owes the banker £1,000, which will not be covered by the guaranteee.

227. *Set-off*.—Set-off is the statutory right by which a debtor is entitled to take into account a debt owing to him by his creditor when being sued for a debt due from him to the creditor. In order that this right of set-off may be exercised, the debt must be a sum certain, due by and to the same parties, and in the same right. For example, a banker, apart from an express or implied agreement to the contrary, may set off a customer's credit balance against a debt due to him from the customer. The separation of various accounts kept with him by the same customer—such as "Private Account" and "Colliery Account," "Deposit Account" and "Current Account," "No. 1 Account" and "No. 2 Account," and accounts kept at different branches of the same bank (again, apart from agreement, express, or implied from the course of business between the banker and his customer) does not, of itself, deprive the banker of his right of set-off. Such separation is, *prima facie*, for the sake of convenience, and it is the balance of the combined accounts which forms the real debt. But if the customer has one account for his own money and another for trust money, the banker cannot set-off a credit balance on the trust account against a debit balance on the personal account. Again, only those debts can be the subject of set-off which are due and recoverable at the date of set-off; a debt accruing due cannot be set-off against a debt already due. For example, a banker, in the absence of agreement,

cannot set-off a debt due to him upon a loan account, repayable on demand, or at a specified date, against a credit balance on current account, for until demand or the arrival of the date, the loan is not due for repayment.

Where a customer has both a private account and another account, such as a trust account, for which he is personally liable when it is overdrawn, it would appear that the banker is entitled to set-off a credit balance on the private account against a debit balance on the trust account, but not *vice versa*. Before combining the two accounts, the banker must give reasonable notice, and must not dishonour cheques drawn on the private account before notice (Paget, *Law of Banking*, 4th Edition, p. 362). The practice of giving notice should, where possible, be followed, even if not legally necessary. (See also pp. 77-8 and Note on p. 217.)

Debts due in different rights cannot be set-off, on the principle that one man's money cannot be used to pay off another man's debt. For example, a debtor must not set-off a personal debt due to him by an executor against a debt due to the estate which the executor is administering, except where the executor is entitled to the full benefit of the estate. Nor can a banker set-off the credit balance on a partner's account (except where he is a sole partner) against a debt due on the firm's account, and *vice versa*. And there is not any right of set-off between a customer's private account and a joint account in which he is one of the parties. If a man dies with his account in debit, the banker cannot set-off a credit balance on the executor's account against the debt, neither can he set-off a credit balance of the deceased's account against the executor's debit balance. In each case a cheque from the executors transferring the balance is required.

Except by special agreement or in the event of the customer's bankruptcy, a banker is not entitled to retain a credit balance to secure himself against a customer's contingent liability on bills discounted for him by the banker.

**228. Charges.**—Where there are definite times established by custom for entering in the customer's account the interest payable on advances, the banker is not entitled, without due notice to his customer, to debit his charges at any other than the customary dates, in order, for instance, to justify his dishonouring a cheque because the balance, after debiting the accruing interest, would be insufficient to meet the cheque. And if the banker has agreed to allow his customer to overdraw up to a specified limit, he cannot,

without due notice, debit his charges at other than the customary times, and dishonour cheques drawn within the agreed limit.

The banker's right to charge compound interest ceases on the death or bankruptcy of his customer. In the event of death, he can charge simple interest up to the day of payment, while, in the case of bankruptcy, he may only prove for simple interest up to the date of the receiving order. In the case of a deed of assignment, he may prove for simple interest up to the date of the deed.

As regards commission, it is the general practice to charge commission on current accounts unless a sufficient balance is maintained to pay for the working of the account. The general method of calculating this charge is at an agreed rate per cent. on the turnover. The turn-over of an account is the total of the debit side of an account less any *debit balance* brought forward, or less any credit balance carried forward, *i.e.* it is the total of the items debited to an account over any given period. Sometimes a round sum is charged, generally by agreement with the customer. This is known as a "fixed" or "commuted" commission.

229. *Statute of Limitations*.—Since the basic relationship between a banker and his customer is that of debtor and creditor, the Statutes relating to limitation of actions on contracts operate between the two parties as between any other debtor and creditor. So far as regards any debts, other than specialty debts, *i.e.* debts expressed in deeds, any action must be commenced within six years of the cause of action, *i.e.* from the first date the creditor had the right to sue the debtor for the debt. The law enforces this limit to encourage persons to bring their actions without undue delay. It should be noted that the law does not destroy the obligation, but only the right to sue the debtor personally, so that securities held against the debt can be retained and realised. When a debt cannot be sued upon in a court of law owing to lapse of time, it is said to be "statute-barred."

In regard to a credit balance on current account, the position is modified by the special relationship existing between a banker and his customer, and it has recently been held that an express demand for re-payment is a condition precedent to the right to sue the banker for the balance. Hence, the Statute will not begin to run until the customer has made a demand for repayment which has been refused by the banker. Since this position, generally speaking, is not likely to arise, the decision will not have much practical effect.

A banker cannot recover a debit balance on an account which has lain dormant for six years, unless there has been an acknowledgment of the debt in writing, signed by the debtor or by his duly accredited agent. It is sometimes difficult to decide whether an acknowledgment constitutes a sufficient acknowledgment. In an unconditional acknowledgment of the debt a promise to pay is implied by law, but if, for example, the customer writes to the banker and says "I acknowledge I owe you £100, but I cannot and will not pay," such an acknowledgment is not sufficient to arrest the operations of the Statute.

If there has been a proper acknowledgment in writing, the Statute begins to run from the date of the writing. So also if there has been a part payment of the debt, or of interest on the debt, the Statute begins to run afresh from the date of the last payment of the interest or principal. If the writing promising to pay expresses also a condition of payment, to make the writing an effective acknowledgment, it must be shown that the condition has been fulfilled.

Periodical entries in a banker's books of the amount of interest due on a dormant loan or overdraft does not, of itself, enable the banker to maintain an action against the borrower after six years, if the borrower has not operated on the account, or has not made any such acknowledgment as is required by Statute. Where a customer keeps several current accounts all in the same right, they are all to be considered as one account, and operations on any one would prevent the Statute running in respect of any dormant balance on the other or others.

But with regard to a current account and a definite loan account, there may be some difference, since, admittedly, the banker cannot combine the two accounts without due notice to his customer. Hence, if no such notice had been given, it might be argued that the Statute ran in respect of each account separately. In practice, however, the interest on the loan account would be paid, directly or indirectly, by a debit to the current account.

In the case of a deposit account, the Statute of Limitations does not often affect the remedies of the parties. The payment of interest, or even the mere addition of interest to the balance by the banker, as the debtor, effectively prevents the application of the Statute. Furthermore, the depositor is not generally entitled to repayment of the money until after the expiration of a specified period of notice, and the six years do not begin to run until the

money is due to be paid, *i.e.* when notice has been given and has expired. If a deposit has been taken for a fixed period, then the Statute will begin to run from the expiration of the period. In all cases the guiding principle is that the Statute begins to run immediately the depositor is entitled to enforce his rights against the banker. These remarks apply also to Deposit Receipts.

230. *Closing an Account*.—A customer can close a credit account, by merely drawing a cheque for the balance, but a banker cannot so easily close an account which has become unsatisfactory. The usual method is to write to the customer informing him that no further credits will be received, and either request him to withdraw his balance, or inform him that cheques will only be honoured up to the amount of his credit balance. A banker is not entitled to close an account without giving such reasonable notice as will obviate any damage to the customer's credit. For this reason, therefore, it is not advisable, when wishing to close an account, to send the customer a cheque for his balance without regard to outstanding cheques.

A customer cannot be prevented from closing his account even though there are bills running under discount and on which he is, therefore, contingently liable.

When accounts are closed, the banker should always get all unused cheques returned to him.

231. *Secrecy*.—A banker is bound not to disclose the state of a customer's account, whether it is overdrawn or in credit, except upon a reasonable and proper occasion, or by order of the Court or a Judge. As regards the latter, in order to avoid the inconvenience of producing the actual books in court, a certified copy of an entry or entries in a banker's books, duly sworn, is admissible as evidence. This is established by the Bankers' Books Evidence Act, 1879.

232. *Payment of Cheques by Correspondents under Advice*.—When a customer wishes to have his cheques cashed at another branch, or at a branch of another bank, he must make application in writing, or sign an appropriate form, stating the limit of amount, daily, weekly, monthly, or quarterly, as the case may be, and also how long he wishes the arrangement to continue. The manager of his branch sends a letter of advice (enclosing a specimen signature), authorising the other branch or bank to honour the customer's cheques up to the agreed limit, and for the stated time, or until the order is countermanded. If the cheques are to be honoured

at a branch of another bank the arrangement is made through the respective head offices.

Cheques cashed in this manner are not cancelled by the cashing branch or bank, but are generally marked "Paid by order." The cheques should bear the cashing branch's stamp and may be remitted either through the head office to the drawee-branch or direct, according to the arrangements made. They are sometimes stamped on the back, as *e.g.*, "Paid at London Bank, Kensington Branch, John Jones, Cashier." The cashing banker is liable if he cashes a cheque under a forged signature. In regard to a forged indorsement, the statutory protection afforded to a banker (s. 60, Bills of Exchange Act, 1882) cashing a cheque for a person having a defective title or no title at all, only applies to cheques cashed at the branch on which the cheque is drawn. The branch, therefore, which cashes cheques payable under advice should make certain, before handing over the money, that the person tendering the cheque for payment has the drawer's authority to receive the money. The banker might in these cases ask his customer for an indemnity, putting the cashing bank or branch on the same footing as regards statutory protection as the drawee-branch (see Note p. 217).

The banker on whom the cheque is drawn is bound to pay all cheques properly cashed under advice. All running advices to honour cheques issued by a branch and all those received by that branch should be recorded in the proper book, and, in the case of credits opened by the branch, a note of such credits should be made in the ledger account of each customer affected. Stop notices should be sent, where necessary, to every branch where the customer's cheques are payable.

**233. Bank Agents and Correspondents.**—It often happens that a banker is asked to perform some service for his customer, which he cannot perform without employing an agent or correspondent. For example, he may have to collect for a customer a bill payable in Melbourne. Since the banker himself employs the agent for collection, the agent, apart from express agreement, is responsible to him alone, even though the customer has knowledge that the banker is employing an agent. There is no privity of contract between the customer and the agent. If, therefore, through the default of the agent, *e.g.*, his bankruptcy or negligence, the proceeds of the bill on Melbourne fail to reach the customer, the loss must be borne by the banker, not the customer. The agent, however, is liable to the banker for such loss.

Conversely, if the banker remits money on account of a customer to the agent for the payment of bills drawn by the customer, but does not specifically mention the bills to which the remittance is to be appropriated, the customer may not be able to follow the money should the banker fail, and the agent retain the money on account of debts due to him by the banker. But if the banker does specifically appropriate the remittance to particular bills drawn by his customer, then the agent must apply the money sent to the discharge of those bills, no matter what the state of accounts may be between him and the banker.

**234. Garnishee Orders.**—A garnishee order is an order of the Court, obtained by a judgment creditor, attaching funds in the hands of a third party who owes the judgment debtor money, warning the third party (the garnishee) not to release the money attached until directed by the Court to do so.

GARNISHEE ORDER nisi (ATTACHING DEBT).

No. ....

In the High Court of Justice,  
King's Bench Division.

District Registry.

Between

.....	Judgment Creditor.
.....	Judgment Debtor.
.....	Garnishee.

Upon hearing Mr. ..... as Solicitor for the above-named Judgment Creditor, and upon reading the affidavit of the said ..... filed the ..... day of ..... 19 .....

It is ordered that all debts owing or accruing due from the above-named Garnishee to the above-named Judgment Debtor be attached to answer a judgment recovered against the said Judgment Debtor by the above-named Judgment Creditor in the High Court of Justice, on the ..... day of ..... 19 ..... for the sum of £....., debt and costs on which Judgment the said sum of £..... remains due and unpaid.

And it is further ordered that the said Garnishee attend the District Registrar in chambers, at the County Court offices, ..... on ..... day, the ..... day of ..... 19 ..... at ..... o'clock in the ..... noon, on an application by the said Judgment Creditor that the said Garnishee pay the debt due from ..... to the said Judgment Debtor or so much thereof as may be sufficient to satisfy the Judgment.

Dated this ..... day of ..... 19

District Registrar.

A garnishee order served on a banker (the third party) attaches the *whole* of the customer's balance on current account, without reference to the amount of the judgment debt, and until the withdrawal of the order, the account must remain dormant, even as

regards cheques put into circulation before the date of the order. The order only affects debts actually due or accruing due (*i.e.* already incurred but payable at a definite future time) at the date of the order. The order does not affect future debts, *i.e.* debts not existing at the time the order is served. It is therefore the usual practice of bankers, immediately on receipt of the order, to inform the customer that the order has been served upon him and to open a fresh account, through which all future items should be passed—the old account being left dormant until the garnishee matter is settled. The order cannot affect this new account, for the banker's debt, represented by the balance in the customer's favour, was not a debt due or accruing due at the date of the order. If the new account is in debit, the banker, by virtue of his lien on the balance of the old account, can, after satisfaction of the garnishee order, transfer the balance to the new account.

There are two forms of original orders in garnishee proceedings, the order *nisi* and the "summons." The former commands the garnishee to appear before the Court, when, if he cannot satisfy the order, he must show cause. If the Court makes the order *absolute*, the garnishee must then pay over the amount garnisheed. The "summons" is similar in effect, except that it gives the garnishee the option of paying the amount into Court within five clear days before the hearing, and thus avoid further costs. The banker should inform his customer before exercising this option.

If the customer's balance is insufficient to satisfy the amount of the order, the proper course for the banker is to pay the whole balance into Court. Such a payment would be a valid discharge as between banker and customer. Before paying the balance into Court the banker is entitled to deduct from the balance any debts due to him from the customer which existed at the date of the order, and for this purpose he can combine all the customer's current accounts. But he is not entitled to retain moneys to meet a contingent liability of the customer on bills discounted by the banker for the customer, and still running. And, as we have already stated, he is not entitled to transfer the balance on the current account to the loan account, so as to defeat a garnishee order.

If, at the date of the order, the customer's current account is overdrawn, there is no debt due from the banker to the customer, and, therefore, no money to attach, and this is so even though at the time that the order is served the customer had not reached the agreed limit of overdraft.

It has been decided that cheques credited as *cash*, though uncleared, come within the garnisheed debt, on the ground that the banker by crediting as cash is collecting them for himself and not for his customer, so that the whole balance, including the uncleared cheques, is an existing debt for garnishee purposes. But the garnishee order does not affect any funds not actually in the banker's hands at the date of the order, *e.g.*, the proceeds of stocks and shares sold by the customer's instructions, and not yet handed over to the banker by the broker.

Where a judgment debtor is one of the parties to a joint account, the joint account is not attached. Neither can a balance be attached if it proves to be trust money.

Since a garnishee order affects all debts due or accruing due, deposit accounts repayable on demand or at a fixed date are attached. As regards a deposit account repayable on the expiry of a fixed notice, there is some doubt whether a garnishee order will attach, unless notice of withdrawal has been given before service of the order. From a recent case, it would appear that the order does attach, but this was not the point at issue.

As in the case of current accounts, the *whole* deposit, if attachable, is attached, irrespective of the amount of the garnisheed debt.

When a garnishee order is served on the head office of a bank against a customer having an account at a branch, the order should be forwarded without delay to the branch, and the account there stopped immediately on receipt of the order. Accounts at foreign branches out of the jurisdiction of the English Courts are not attachable.

**235. Standing Orders.**—A banker often undertakes various subsidiary services for his customers. One of these is the making of periodical payments on their behalf, such as club, charitable subscriptions and insurance premiums. The banker should keep a diary in which all such payments are duly entered on the dates when they are due to be paid. Care must be taken to see that all such instructions are carried forward at the year's end. If payments are not duly made, the banker will be responsible for any loss that may ensue. (For Stamp Duty see p. 40.)

**236. Purchase and Sale of Stock Exchange Securities.**—The purchase and sale of stock exchange securities, *i.e.* shares, stocks, etc., quoted on the Stock Exchanges, is one of the services a banker is prepared to render his customer. The customer's instructions should be taken on the usual bank form, detailing full particulars of the securities and stating the price limits, if any.

If the security is a registered or inscribed one, the order to sell must be signed by all the registered or inscribed holders (see p. 247 for explanation of these terms). In the case of a bearer security, all persons holding themselves out to be the owners should join in any authority to sell.

When a purchase is intended, full particulars of the security required should be stated in the order, together with any price limits. Generally these orders embrace a clause giving the banker authority to debit the customer's account with the cost of a purchase, or to credit the proceeds of a sale. Orders to buy or sell do not require stamping, even in the case where instructions to debit an account are given, since the sum is not a sum certain.

The banker in a transaction of this nature is the agent of his customer, and, as such, must act with all diligence, both in buying and selling, forwarding his principal's instructions to the brokers accurately and without variation. When the transaction is completed he must get possession of the proper documents of title in a purchase and of the proceeds in a sale. If the banker negligently fails to secure a purchase or to effect a sale, he will be liable to his customer for any loss that may ensue. Similarly, he will be liable if he varies without authority the instructions given to him by the customer.

**237. Valuables for Safe Custody.**—The fact that a banker, for his own protection, has to provide himself with strong rooms, makes him particularly suitable as a medium for taking charge of such of his customers' valuables as can be conveniently stored in his strong rooms. By taking charge of property in this way, the banker becomes a *bailee*, *i.e.* a person to whom goods are entrusted for a specific purpose.

All articles left for safe custody must be entered in the special register kept for the purpose. The entry should be signed by the customer and by the bank official who receives the articles. When the things are given up, the book must be signed as a receipt, unless, as is sometimes done, a separate receipt is taken from the customer. Bankers generally give receipts for articles deposited with them for safe custody, and this receipt must be returned when the articles are given up.

All boxes should be locked and the key kept by the customer, while parcels should be securely sealed. If either contain bonds with coupons or other securities which require attention from time to time, and the customer wishes the bank to attend to them, it

is desirable that these bonds should be entered separately in the Register. Boxes and parcels should bear the name and address of the depositor, the banker's serial number, and a brief description, such as "One sealed parcel inscribed John Smith, 5, Long Road, Northtown."

When boxes or parcels are left open or unsealed, then all the contents should be enumerated in the Register and signed by the customer. If the banker is to be responsible for cutting off coupons, etc., care must be taken to see that the due dates are entered in the diary.

*Note* (see p. 208).—*Set-off*.—The case of *Greenhalgh v. Union Bank of Manchester*, 1924, emphasises the need, in order to avoid the possibility of any implied agreement or course of business, precluding the banker from exercising his right of set-off when it suits him to do so, to take a definite agreement from his customer authorising the banker to combine the accounts at any time without notice and dishonour cheques on the credit account should the resulting balance be insufficient. Alternatively, the banker can give his customer reasonable notice to the same effect, but, in the meantime, it might be dangerous to dishonour cheques on the credit account. But if an event occurs which stops further transactions on the account, such as the customer's death or bankruptcy, then, in the absence of any notice of trust, the right to set-off is undoubtedly.

*Note* (see p. 212).—The question of protection against payment on a forged indorsement for the cashing branch or banker has again been referred by the Institute of Bankers to Counsel, with the result that it is now considered that payment by another branch at the request of the drawer would be a payment in the ordinary course of business, entitling the branch to the protection of section 60. Where, however, the cheque is cashed by another banker, Counsel considers that the banker does not obtain protection (see *Journal of the Institute of Bankers*, February, 1924, and Q.B.P., No. 488).

## CHAPTER XVI

### MISCELLANEOUS ACCOUNTS OF CUSTOMERS \*

**238. Introductory.**—The procedure on opening an account for a new customer has already been explained (see Chapter II).

**239. Authorities to Sign on Account.**—When a customer wishes to authorise another person to operate on his account, it is essential for the banker to get from his customer a mandate or letter of authority expressing in precise terms what powers have been delegated to the *mandatory*, *i.e.* the person authorised to sign.

An authority to draw and indorse cheques does not necessarily imply an authority to draw, accept and indorse bills of exchange, and, unless expressly provided for, it does not authorise the mandatory to overdraw the account so as to make his principal liable, or to pledge or withdraw securities. If there is a limit of time during which the customer wishes the authority to operate, as, for example, during his absence from England, this should be clearly expressed, and, a point which is very important, the mandate should state that it shall continue in force until expressly revoked by notice in writing, delivered to the banker. Specimens of all parties authorised to sign in a mandate should be added at the foot. It does not require stamping unless in the form of an agreement between the parties.

When a mandate is cancelled, the customer's instructions should be obtained regarding any outstanding cheques signed by the mandatory before the cancellation. In the absence of instructions to pay them, they should not be paid without reference to the customer.

Bankers have special forms suitable for the class of account concerning which the mandate is required. The following is a simple form for one individual to sign on an individual customer's account.

\* It is not possible in an elementary book to treat this subject exhaustively, and readers who require further information should refer to *Practice and Law of Banking*, by the same author, Part IV, Chapter III.

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*Mandate or Authority for a person to draw on another person's account.*

To the ..... Bank, Limited.

Referring to the Current Account opened at your Bank, I hereby request you to honour all cheques drawn on the said account by the person whose signature is hereunder written, notwithstanding that such cheques may create or increase an overdraft to any extent, and I authorise the said person on my behalf to make, draw, accept, or otherwise sign any Bills of Exchange, Promissory Notes or other negotiable instruments, and to discount the same with your Bank or otherwise, and also to indorse cheques or other negotiable instruments of any description.

This authority shall continue in force until I shall have expressly revoked it by a notice in writing delivered to you.

Dated this ..... day of ..... 19 .

The following is the signature of the person authorised to sign as above mentioned.

The special features in regard to authorities in connection with agents, joint accounts, etc., are dealt with later in this chapter. In the case of Companies, Associations, and similar bodies, the mandate drawn up in accordance with resolutions, passed and duly authenticated, appointing the bank as banker to the company, etc., is the banker's authority to open the account, and is, therefore, an essential document. Even if not essential, as in the case of joint accounts when it has been arranged that all parties to the account must sign, a mandate should always be taken.

Particulars of all mandates should be entered in the heading of the relative ledger account, special reference being made to limitations in duration, or amount, if any.

**240. Agents.**—An agent is a person who has power to act for or on behalf of another person, called his Principal. A writing expressing the powers of the agent is not, generally speaking, a necessary element in the appointment of an agent, but, where there is no written authority, the powers of an agent are conjectural, and are determined by the usage of the particular trade, the course of dealing between the parties, and the conduct of the principal and agent. If the banker is cognisant of the fact that an agent has exceeded his powers, the banker cannot make the principal liable for those acts of the agent which do not come within the scope of his authority. An agent may not, except with his principal's express or implied consent, appoint another person to act for him so as to make the principal liable for the sub-agent's acts.

Any person of sound mind may act as an agent, even an infant,

though the latter has, generally speaking, no power to make contracts in which he appears as a principal. An undischarged bankrupt may also act as agent.

In all cases where an agent signs on behalf of his principal, he must so sign as to make it clear that he signs in a representative capacity. If he does not do this he may make himself personally liable. It is not sufficient to add to his signature words describing him as an agent or as filling a representative character (Bills of Exchange Act, 1882, s. 26 (1)). He is not always safe if he attaches his bare signature to a document in which he is described as an agent.

In some cases the agent may be empowered to sign his principal's name, but the usual form of signature is *per procuration* (*p.p.* or *per pro.*). An agent authorised to indorse cheques *per pro.* is not thereby entitled to negotiate or cash them, or to pay them into his private account. Any banker who permits an agent to do any of these things incurs considerable risk, unless he has the principal's express authorisation. Again, the banker is put upon inquiry if an agent, who has power to *draw* cheques on behalf of his principal, pays such cheques into his private account, for "a signature by *procuration* operates as notice that the agent has but a limited authority to sign, and the principal is only bound by such signature if the agent was acting within the actual limits of his authority" (s. 25, Bills of Exchange Act, 1882). This section covers all signatures put on by delegated authority; the expressions *per pro.* or *p.p.*, though usual, are not essential.

The death, insanity, or bankruptcy of the principal determines the authority of the agent to act on his behalf, and upon notice of any of these events the banker must immediately suspend all operations on the account. Cheques presented after the principal's death should be returned, marked "Drawer deceased." But if the agent dies, any cheques signed by him on behalf of his principal, and presented subsequent to his death, should be duly honoured. Insanity of the principal, or of the agent, determines the authority, but a principal, certified as insane, is liable for any authorised transactions entered into on his behalf by the agent with any person who was ignorant of the principal's insanity. Bankruptcy of the agent does not necessarily determine his authority.

**241. Power of Attorney.**—An agent is sometimes appointed by power of attorney. A power of attorney is a writing usually, but not always, under seal, authorising a person to act as attorney for

another person ; that is to say, to do any special lawful act, or a series of lawful acts, on behalf of that other person. A general power which gives the agent power to collect and pay debts, and to transact business for his principal, does not, as a general rule, include an authority to draw, accept and indorse bills of exchange so as to make the principal liable. Neither does it authorise the agent to borrow money on behalf of his principal, or to pledge his principal's property. It is, therefore, important that the banker should carefully peruse the letter of attorney to see what are the actual powers conferred by the document on the agent. If the power is given for a fixed period, or during the continuance of a happening to the principal, e.g., his absence abroad, such limitations should not escape the banker's attention. It is usual for the banker to have a certified copy of the power.

Agents signing under a power usually sign *per pro.*, or sometimes after the donor's name add such words as "By his attorney, John Smith." In exceptional cases the attorney might be empowered to sign in the form of the donor's name only. A power becomes void on the death, bankruptcy, or insanity of the principal, in the same way as any other authority to act, but such revoking will not affect the rights of third parties, until they have notice of determination, in those cases where third parties are justified in assuming that the agent still has the authority which he certainly had at one time. A general power of attorney should bear a 10s. stamp.

**242. Lunatics.**—A person making a contract is presumed to be of sound mind, and if mentally unsound, he can only avoid the contract if he, or some one on his behalf, can prove that the other party knew his mental condition at the time of contracting. Thus, if a man accepts a bill, he is liable on it, whether he is insane or not, unless he can prove that the person who got him to accept the instrument was aware at the time that he was insane. In regard to a subsequent holder of such a bill, the editors of *Byles on Bills*, 17th edition, p. 81, suggest that the onus of proving that the bill had been taken for value and in good faith might lie on the holder, by virtue of s. 30 (2), Bills of Exchange Act, 1882. But if a lunatic buys necessities he cannot avoid the contract, but must pay a reasonable price for them.

When a banker receives proper notice of a customer's lunacy, all operations on the account must be suspended until receipt of an order of the Court, or of proof of the customer's recovery. All cheques honoured by the banker before receipt of notice can be debited to

the lunatic-customer's account, but the banker may be liable for all cheques honoured after receipt of notice. The banker will not be safe in relying upon mere hearsay evidence of his customer's insanity, but knowledge that his customer is detained in a lunatic asylum will be sufficient authority for the suspension of operations on his account.

When a person is found to be of unsound mind the usual practice nowadays is for the Court to appoint a Receiver, who manages the mentally unsound person's affairs under the direction of the Masters in Lunacy. All cheques must be signed by the Receiver. If the customer is suffering from temporary mental derangement, it is not uncommon for the banker to waive his strict legal rights, and to allow the customer's wife or next of kin to operate on the account, provided that a certificate in the form of a statutory declaration from two medical men is obtained, and that satisfactory security is furnished indemnifying the banker against any claim that may afterwards be made by the customer to recover any amounts so withdrawn whilst he was mentally deranged.

For the effect of lunacy on a mandate given by the lunatic. see p. 220.

**243. Intoxicated Persons.**—In the eyes of the law, drunkenness does not affect a person's power to contract, but the law will not allow any person to take undue advantage of a drunken person's state. If, therefore, a person induces another person, who is so drunk that he does not know what he is doing, to give him a bill or cheque, the drunken person may avoid the instrument so far as the person who improperly induced him to execute it is concerned, but if the instrument in the meantime has been transferred to a holder who takes it in good faith and for value, the drunken person cannot deprive the holder in due course of his rights under the instrument. If a customer tenders, when drunk, his own cheque over the counter, and insists upon having cash for it, the banker would be well advised to have a witness to the signature and the payment of the money.

**244. Trustees in Bankruptcy, Liquidators of Companies, Assignees, etc.**—Trustees in bankruptcy must pay all moneys received in their official capacity into the Bankruptcy Estates Account kept with the Bank of England, but the Board of Trade, on application, may give permission for accounts to be opened with any other bank. No trustee in a bankruptcy or under any composition or scheme of arrangement must pay any sums received by him as trustee into his private banking account (Bankruptcy Act. 1914, s. 88). All payments

out must be made by cheque payable to order, and every cheque must have marked or written on the face of it the name of the debtor's estate and shall be signed by the trustee and countersigned, where there is a Committee of Inspection, by at least one member, and by such other person, if any, as the creditors or Committee of Inspection may appoint, and where there is no Committee, by such person, if any, as the Board of Trade may direct.

In practice, however, bankers do not usually require the cheques to be countersigned by one of the members of the Committee of Inspection unless special instructions to this effect are given at the time the account is opened. All cheques drawn by a trustee in his official capacity are exempt from stamp duty.

Similar regulations are made by the Companies Act, 1929, and by the Companies Winding-up Act, 1890, in regard to payments in and out of the Companies Liquidation Account at the Bank of England, or account at a local bank opened by a liquidator appointed by order of the Court to wind up a company's estate in England. Where there is more than one liquidator, the Court declares whether the signing of cheques, or any other act required to be done by the liquidator, shall be done by one or more than one or by all. There is considerable doubt whether joint liquidators have any power to delegate their authority even to one of themselves.

When dealing with liquidators it is essential that a banker should become acquainted with the powers conferred in writing upon the liquidator, and should know what acts of his have to be confirmed by the Committee of Inspection. In cases of a "member's voluntary winding up," the shareholders have power of control over the actions of the liquidator, whilst in cases of a "creditor's voluntary winding up," the control is vested in the creditors. The appointments of liquidators, trustees, receivers and managers, and assignees, are published in the *Gazette*. If a receiving order is made against a trustee in bankruptcy, he must vacate his office.

When a debtor, in order that bankruptcy proceedings may be avoided, assigns his property to a trustee for the benefit of his creditors, the banking account must be opened in the name of the debtor's estate (Deeds of Arrangement Act, 1914). The actions of the trustee are controlled by the provisions of the deed of arrangement.

**245. Infants.**—Any person under the age of twenty-one is an infant (in Scots Law a *minor*). By s. 22 (2), Bills of Exchange Act, 1882, where a bill is drawn or indorsed by an infant, the infant can convey a good title to a holder, who is entitled to receive payment of the

bill, and the holder can enforce his rights under the instrument against any party thereto except the infant. Since by s. 22 (1) of the same Act "capacity to incur liability as a party to a cheque is co-extensive with capacity to contract," an infant by law having no capacity to contract cannot be sued on any cheque that he may draw, even if it is in payment of necessaries; but in the latter case, though not liable on the instrument, he is liable on the consideration. It follows that if a banker exchanges a cheque for an infant, he cannot recover the proceeds if the cheque is afterwards returned to him dishonoured.

Provided that the account is always kept in credit, there is no reason why a banker should not open an account with an infant. But the infant must not be allowed to overdraw the account, for by s. 1, Infants Relief Act, 1874, "all contracts whether by specialty or by simple contract entered into by infants for the repayment of money lent or to be lent . . . shall be absolutely void," and, moreover, the banker cannot avail himself of a security given by an infant to secure his account. But if the security is given by a third party the banker can enforce his rights against the third party. An account opened in the joint names of an infant and an adult can be operated on like any other joint account, but the infant cannot be made personally liable for any overdraft.

An infant may act as an agent, and, as agent, if given power to do so, he can draw, accept and indorse bills, which are binding on his principal, and may overdraw his principal's account, if that is within the scope of his authority, but the banker should not knowingly allow an infant to do any of these things without the *written* authorisation of the principal. An infant may validly witness a signature.

An infant may be appointed as executor, but, if sole executor, he cannot act as such until he attains full age, his duties meanwhile being performed by his guardian or such other person as the Court may appoint.

An infant may be a partner, but he is not personally liable for the debts of the partnership incurred during his minority.

**246. Joint Accounts.**—This section deals with those joint accounts which are neither partnership accounts nor trust accounts. The latter are fully treated later under the appropriate headings. The following remarks apply to deposit receipts in joint names as well as to current and deposit accounts.

When a joint account is opened, it is advisable to get all the parties concerned to state in writing what signatures are necessary

for operations on the account. Unless this is done the banker is not safe in honouring any cheques unless signed by all the parties.

If the joint parties wish to delegate their authority to operate on the account to an outside party, all the joint parties must unite in giving the authority. Satisfactory evidence of the death of a joint party must be produced when the cheques have to be signed by all, before the balance can be withdrawn by the persons entitled to it under the written authority, but if the signing of cheques has been delegated to one or more of the surviving parties, this proof of death is not necessary, since the survivors have power to draw out the balance by cheque at any time.

In the event of the bankruptcy of one of two or more joint parties, the only safe course for the banker is to stop all operations on the account, pending the joint instructions of the solvent party and the trustee in bankruptcy. Cheques outstanding after receipt of the notice of bankruptcy are a difficulty, but it would appear that the banker can do no other than return the cheques, carefully avoiding, when doing so, any appearance of damage to the credit of the solvent parties.

On the death of a joint party it is usual and advisable for the banker to stop the account and get the survivors to transfer the balance by cheque to a fresh account opened in the names of the survivors. On the death of all the joint parties any balance on the account is payable to the legal representatives of the one that died last.

Cheques on the joint account may be stopped by any one of the joint parties, even by a party who has delegated his authority to operate on the account to one or more of the other joint parties.

The accounts of non-trading partnerships should be treated as joint accounts, not partnership accounts. For a partner in a non-trading firm has no power to bind his co-partners when he borrows money. And he has no implied power to bind his co-partners by accepting a bill or signing a promissory note. Only the partner who signs is liable. It is therefore necessary, when dealing with non-trading partnerships, to get the authority of all in order to bind all. The authority should contain a clause admitting joint and several liability, so that the estate of a deceased or bankrupt partner may be bound. Such professional firms as solicitors, doctors, architects, accountants and auctioneers (except when they also buy and sell goods), are included in this category.

**247. Partners.**—The law of partnership is codified by the Partner-

ship Act, 1890. Partnership, by s. 1 of the Act, is defined as "the relation which subsists between persons carrying on a business in common with a view of profit." By s. 1, Companies (Consolidation) Act, 1908, no private partnership carrying on a business that has for its object the acquisition of gain can consist of more than twenty persons, and, if the business is that of banking, the number is limited to ten. A firm consisting of more than the statutory number of partners must be registered as a company under the Companies (Consolidation) Act, 1908.

According to s. 5 of the Partnership Act, 1890: "Every partner is an agent of the firm and his other partners for the purpose of the business of the partnership; and the acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the firm of which he is a member binds the firm and his partners, unless the partner so acting has in fact no authority to act for the firm in the particular matter, and the person with whom he is dealing either knows that he has no authority, or does not know or believe him to be a partner."

When the account is opened all the partners should join in an authority detailing who is to sign on behalf of the firm, and the form of signature. Each partner who is to operate on the account should sign in the signature book as he intends to sign in all transactions binding the firm.

Every partner in a *trading* firm has an implied power to bind his co-partners by the drawing and indorsing of cheques, the drawing, accepting and indorsing of bills of exchange, and the making and indorsing of promissory notes. He has also an implied power to borrow money on behalf of the firm. But a partner in a *non-trading* firm has no such implied powers, except possibly in the drawing and indorsing of cheques (see *Joint Accounts, ante*).

Any partner has an implied authority to countermand payment of any cheque drawn on the firm's account, and the banker is bound to comply with the instructions issued by that partner. If the partners desire that a person outside the partnership should operate on the account, the authority must be signed by all the partners; a mandate issued by less than all the partners is not sufficient authority for the banker to act upon.

It should be noted that the implied power of a partner with regard to negotiable instruments has some limitations. For example, he cannot, as a general rule, bind his co-partners by accepting a bill of exchange in blank, or by accepting an accommodation bill, except

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so far as regards a holder for value who took the instrument without notice of the blank acceptance, or that the firm was an accommodation party (see *Journal of the Institute of Bankers*, January 1912, pp. 24-5).

Every partner in a firm is jointly liable with the other partners (in Scotland severally also) for all debts and obligations of the firm incurred while he is a partner ; and after his death, his estate is also severally liable in a due course of administration for such debts as remain unpaid, but subject, in England and Ireland, to the prior payment of his private debts (Partnership Act, 1890, s. 9).

A joint liability is not individual but collective ; it is the liability of all together. Hence, though each partner is liable for all the debts contracted by the firm from the moment he became a partner and all the time he continues to be a partner, and the creditor is entitled to sue any partner or all of them, only one action can be brought. Judgment obtained against *all* the partners gives the creditor power to enforce it not only against the partnership property, but also against the private estates of the partners. But if some and not all the partners are sued, and judgment is secured against them, those not sued are discharged from liability, even though the judgment is unsatisfied.

A partner may bind his co-partners by signing a joint promissory note, but he can only bind them jointly, not jointly and severally, by signing a joint and several note, though he himself will be bound severally.

If partners have private accounts as well as a partnership account, it is not incumbent on the banker to question the validity of transfers of money from the partnership account to the private accounts, and *vice versa*. But the banker should not permit any partner to pay into his private account cheques drawn payable to the *firm*, unless express authorisation for such a course has been obtained from all the partners.

By s. 33 (1), Partnership Act, 1890, "subject to any agreement between the partners, every partnership is dissolved as regards all the partners by the death or bankruptcy of any partner" ; and by s. 36 (3), the estate of a partner who dies or becomes bankrupt is not liable for partnership debts contracted after either event has occurred, and it makes no difference whether the creditor was or was not aware that the partner was dead or bankrupt, but the deceased or bankrupt partner's estate is liable for debts contracted before the death or bankruptcy. When the partnership is dissolved by the death,

bankruptcy, or retirement of a partner, the banker should stop the account at once if he intends to retain his lien on the deceased, bankrupt, or retiring partner's estate. If this is not done, the Rule in Clayton's Case will operate.

The continuing partners should be asked to open a new account for future use. Appointment by the Court of a receiver of the firm is sufficient ground for a banker to refuse any further operations on the partnership account. The receiver is then the only person who has power to deal with the partnership property.

The lunacy of a partner does not of itself dissolve a partnership, but upon the application of a fellow-partner the Court may decree a dissolution when a partner is found lunatic by inquisition (*i.e.* by an inquiry instituted by a judge as to whether a man is or is not competent to manage his own affairs), or shown to the satisfaction of the Court to be of permanently unsound mind. Moreover, the Court has power to grant an injunction inhibiting the insane partner from interfering in the partnership business. The banker should act as on the death of a partner.

On the death of a partner, the other partners, by the right of survivorship, are entitled to any balance remaining on the partnership account, and can give the banker a valid discharge for it. The deceased partner's executors, or the trustee in bankruptcy of a bankrupt partner, have no power to bind the firm. In the matter of cheques issued before the deceased partner's death, the banker should only return them, marked "Partner deceased," if the account is overdrawn and he decides to stop the account in order to preserve his lien on the deceased partner's estate; otherwise he should honour them.

A firm is in no case bound by the acts of a partner who has become bankrupt, and therefore, if a cheque drawn by a partner who is the subject of bankruptcy proceedings is presented, the banker should not pay it without getting it confirmed by the other partners. The partnership estate is wound up by the remaining partners, without the intervention of the bankrupt's trustee. The bankrupt's share in the assets passes to his trustee, who cannot bind the firm, but may be authorised by the Court to bring an action in the names of the trustee and the other partners, notwithstanding that the other partners may have released the debtor, or other person against whom an action has been brought, which release shall be void. If a firm is made bankrupt, it involves the bankruptcy of

every member of the firm, and the banker must not permit operations on any accounts standing in the partners' names.

When a partner retires, the banker should, if the account is overdrawn, and he wishes to retain the liability of the retiring partner, stop the account and request the continuing partners to open a new account.

When a new partner comes into a firm, it is necessary for the banker to stop the account and get the partners of the old firm to sign a cheque transferring the balance to a new account, and also a letter signed by the partners of the new firm authorising the banker to debit to the new account all outstanding cheques and all bills dishonoured.

**248. Associations, Committees, Societies, etc.**—Accounts are often opened by persons in control of the funds of Sports Clubs, Agricultural and other shows, Subscription Societies formed to promote some national object, and the like. The committee of management of such societies usually depute certain of their number to operate on the account. If the account is always in credit, the banker has no need to trouble himself about locating responsibility for debts incurred on behalf of the society, but if an overdraft is required, it is essential that he should be able to fix the liability for repayment of the loan upon some definite person or persons. For these voluntary associations, being unincorporated, cannot be sued, and the individual members who administer the funds are not personally liable for any overdraft, provided that the members of the committee or council deputed to operate on the account clearly sign cheques in their representative capacity and have not held themselves out as having authority to overdraw. For example, if an account of this nature is opened under the style of "The Excel Cricket Club, John Jones, Treasurer," and cheques are signed in that manner, in the general way, neither John Jones nor the committee of the club is personally responsible for any overdraft. Therefore, if an advance is required, the banker should obtain a guarantee from responsible parties—inside or outside the association—for repayment.

When an account of this nature is opened in the name of the Society, which is the usual and correct method, the banker should be given an authenticated copy of the resolution appointing the treasurer, and the bank as bankers of the Society, with specimen signatures and detailed instructions as to how cheques are to be signed. The foregoing should be embodied in a mandate, signed by the chairman of the meeting and countersigned by the secretary

(see Appendix, p. 287, for specimen form). Any change in the officials should be immediately notified to the banker. If the treasurer dies or vacates his office, the banker, immediately on receipt of notice, should stop the account, but should honour all cheques drawn before receipt of the notice of death or resignation, but presented afterwards, unless such cheques are countermanded before payment by a duly authenticated resolution of the controlling committee. The executors of a deceased treasurer do not take over an official account of this nature, and the account, therefore, must remain dormant until the banker receives a duly authenticated copy of the resolution appointing a new treasurer.

If the account on behalf of such an association is opened in the following form "John Jones, a/c The Excel Cricket Club," then John Jones is personally liable for any overdraft created by the drawing of cheques on this account. When an account is opened in this form, the banker is entitled to consider it as a personal account of John Jones, and, therefore, does not need to see a copy of any resolution respecting the account.

When an association's funds are vested in and banked in the names of trustees, it is necessary that the banker should see the trust deed, and the rules of the association defining the powers of the trustee, and stating how withdrawals from the fund are to be made. The banker should get a mandate signed, and provided that this conforms to the rules and the provisions in the trust deed, and is strictly adhered to, the banker will not incur any liability.

**249. Building Societies.**—Since every building society is governed by its rules (registered with the Chief Registrar of Friendly Societies), it is incumbent upon the banker to obtain a copy of the rules in order to ascertain the regulations controlling the actions of the persons entitled to operate on the account. The rules declare how cheques are to be signed, and the banker must see that these rules are strictly adhered to. A copy of the resolution appointing the bank as bankers to the society should be included in a mandate, together with specimen signatures and full instructions as to the signing of cheques. This mandate must be duly authenticated.

**250. Friendly Societies.**—These mutual benefit societies are regulated by the Friendly Societies Acts, 1896 and 1908, the Collecting Societies and Industrial Assurance Companies Act, 1896, and the Societies Borrowing Powers Act, 1898. No society can be registered under the Friendly Societies Acts, until its rules have been submitted to and approved by the Chief Registrar of Friendly Societies. All

operations on the account are controlled by the rules, which stipulate how cheques are to be drawn and indorsed. There must not be any deviation from the procedure as set forth in these rules. Cheques drawn by a duly *registered* Friendly Society are exempt from stamp duty, but those of unregistered societies are not.

When opening an account with one of these societies, the banker should get a copy of the rules for future guidance, and a mandate. The mandate should embody the resolution appointing the bank as bankers to the society, include specimen signatures, and state how cheques are to be signed. With regard to the latter, the banker should see that the instructions given conform to the rules of the society. The banker should satisfy himself that any society claiming to be entitled to use unstamped cheques is, in fact, authorised to do so.

**251. Companies.**—The *internal* management of a joint stock company is governed by its Articles of Association, while its *external* operations are controlled by its Memorandum of Association. A copy of each of these documents is therefore necessary to a banker who proposes to have dealings with the company. Another document containing useful information is the company's annual balance sheet.

Where the company proposing to open an account is a newly formed company, it is necessary that the banker should also see its Certificate of Incorporation, issued by the Registrar of Joint Stock Companies. This certificate is conclusive evidence that all the statutory requirements of the Act have been complied with. In the case of public companies, the banker should also see the certificate issued by the Registrar certifying that the company is entitled to commence business. Until this latter certificate has been issued, no public company can begin business operations or borrow money. This provision does not apply to Private Companies, which can commence business operations as soon as incorporated.

“The Memorandum of Association is . . . a company's fundamental and, except in certain particulars, its unalterable law.” In the Memorandum are set forth the objects for which the company was established, and the powers with which those in charge of its operations are invested. Nothing contained in the Memorandum can be altered except by sanction of the Court, upholding a special resolution of the company. Any act done or contract entered into by the company, which is outside the scope of the Memorandum, is *ultra vires* (*i.e.* beyond the powers) of the company, and not binding upon

the company. The <sup>7</sup> Articles of Association contain the regulations controlling the internal management of the company. The Articles together with the Memorandum must be registered with the Registrar of Joint Stock Companies.

Every person dealing with a company is taken to know the provisions of the Memorandum and Articles, so far as they relate to the company's dealings with persons outside the company. Both the documents can be inspected by any person at the Registry of Joint Stock Companies in London or Edinburgh respectively, upon payment of a fee of one shilling. The banker, therefore, before dealing with a company, must get to know the powers of the directors as prescribed in the two documents, more particularly their borrowing powers and their powers to mortgage the company's assets, and the regulations controlling the signing and indorsing of bills and cheques. But the banker is not taken to know anything relating to the internal management of the company.

A copy of the resolution of the directors, appointing the bank as bankers to the company, should be included in a mandate giving all the necessary particulars of the way in which the monies of the company may be drawn out for the purposes of the company, and including specimen signatures (see Appendix, p. 288, for specimen form). This mandate duly signed by the chairman and countersigned by the secretary forms the banker's authority for transacting business with the company. The banker should see that it is consonant with the provisions of the Memorandum and Articles. Any change in the directorate or secretaryship should be notified to the banker by enclosing a duly authenticated copy of the resolution making the change of appointment.

The Directors are persons appointed by the members to manage the business of the company in the interests of the shareholders. They are the agents of the company in its dealings with persons outside the company, and their powers are strictly defined by the Memorandum and Articles. If they go beyond the powers conferred upon them by these documents, they are personally liable, provided that the party with whom they have contracted had no notice that they were going beyond their powers. For example, if they borrow money from a banker without authority, or in excess of their authority, they are personally liable, as having committed a breach of warranty of authority, provided that the banker, when advancing the money, was acting in good faith and without knowledge of the lack of authority.

The Secretary's position depends upon the authority with which he is clothed. *Prima facie*, his duties are those of a mere scribe, deputed to record and carry out the instructions of the directors. But if his powers are greater than these, and the persons dealing with him know it, then his actions within the scope of the authority conferred upon him are binding both on the directors and the company. Neither the directors nor the secretary should be allowed to put cheques payable to the company into their private accounts.

Section 26 of the Companies Act, 1929, defines a Private Company as one "which by its Articles (a) restricts the right to transfer its shares; (b) limits the number of its members to fifty, not including persons who are in the employment of the company and persons who, having been formerly in the employment of the company, were while in that employment, and have continued after the determination of that employment to be, members of the company; and (c) prohibits any invitation to the public to subscribe for any shares or debentures of the company." S. I of the same Act provides that a private company shall not consist of less than two persons, and other sections of the Act absolve such companies from some of the regulations imposed upon public companies—the most important of these being exemption from the obligation of sending an annual statement in the form of a Balance Sheet to the Registrar (s. 110 (3)).

Every company, other than a private company, registered under the Companies Act, 1929, is a public company and must consist of not less than seven members. Banking partnerships consisting of more than ten, and other partnerships consisting of more than twenty, persons must by ss. 357-8 of the Act be registered as companies, either public or private, and with limited or unlimited liability.

By s. 18 (1), where it is proved to the satisfaction of the Board of Trade that a limited company is being formed for promoting commerce, art, science, religion, charity, or other useful object, and intends to apply its profits, if any, or other income in promoting its objects, the company may be registered with limited liability, without adding the word "Limited" to its name. All other limited companies must have the word "Limited" as the last word of their name (s. 2 (1)).

By s. 93 (1), every limited company "shall have its name mentioned in legible characters on all . . . bills of exchange, promissory notes, indorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of the company. . . ." The signing of bills, cheques and promissory notes may be done in one of two ways: (a) by a duly authorised agent signing the name of the company

only, (b) by a duly authorised agent signing by or on behalf of or on account of the company, followed by the agent's signature. Both forms of signature will be binding on the company (s. 30). If the true name of the company does not appear on the documents enumerated in s. 93, which also includes notices, advertisements, etc., and if the officials signing have not the requisite authority, they may incur personal liability on the instruments, unless the same are duly paid by the company (see s. 93 (4)). If the name of the company is not on the bill, cheque or promissory note, the official is also liable to a fine not exceeding £50.

252. *Winding up*.—By s. 126, Bankruptcy Act, 1914, no receiving order can be made against any corporation, or against any partnership, or association, or company, which is registered under the Companies Act, 1929, or any enactment repealed by that Act. A company terminates its career by its being what is called "wound up"; during the process it is said to be "in liquidation." Winding up may be necessary (1) because the company is unable to pay its debts; (2) because it is deemed advisable to reconstruct the company, or to amalgamate with, or be absorbed by, another company; (3) because of the non-compliance with statutory regulations. There are three ways in which a company may be wound up: (1) By the Court (Compulsory Liquidation). (2) Voluntary Liquidation. (3) Voluntary Liquidation under Supervision of the Court (Companies Act, 1929, s. 156).

253. **Deceased Customer, Executors, and Administrators.**—By s. 75, Bills of Exchange Act, 1882, notice of a customer's death determines the duty and authority of a banker to pay his customer's cheques. Therefore, upon receipt of notice of his death, all operations on the account should be suspended until production of probate, if the deceased has left a will, or of letters of administration, if the deceased died intestate. Cheques paid before receipt of notice can be debited to the account, and cheques marked by the banker at the customer's request, or in accordance with the custom of the local clearing, and paid by the banker after receipt of notice, can also be debited to the account; so also can any amount due to a stockbroker for purchases made by the banker on the customer's behalf, and similar liabilities incurred by the banker on the customer's instructions.

After exhibition of probate [or letters of administration] to the banker, the executors [or administrators] should be allowed to close the account, and deal with the deceased's securities. A banker must not pay over any money, or release any securities on production of

any foreign or colonial probate—only a probate taken out in this country can control any English estate. *Probate* is a copy of the deceased's will, made out under the seal of the Probate Court Registry, together with a certificate stating that the will has been proved.

The following particulars of probate or of letters of administration should be recorded by the banker: Dates of the will and of probate; where probate was granted; the date of exhibition and the name of the person exhibiting it; the probate value of the estate; names and powers of the executors, administrators, or trustees. These details should be entered in the ledger against the deceased's account, or in the Probate Book. A copy of any proved will can be obtained from Somerset House.

If the deceased left a credit balance on his account, this should be drawn out by the legal representatives' cheque (signed by all), and transferred to the executorship account. Such an account would either be opened in the personal names of the legal representatives (without reference to the executorship), or in the following form: "The Executors of John Smith, deceased, H. Brown and W. Robinson, Executors." If the account is opened in the personal names of the executors, all the executors should sign cheques, unless other arrangements are made when the account is opened. If the account is opened as avowedly an executorship account, one executor could legally operate on the account, and the banker, unless a different arrangement is made, must pay all cheques so drawn; but it would appear—the matter is not beyond doubt—that any executor can, at any time, countermand the payment of cheques drawn by any other executor. Where all the executors sign the cheques it is beyond doubt that any one of them can countermand payment. To avoid disputes, the banker should come to some definite arrangement at the time the account is opened, and get his usual form of mandate or authority for joint accounts, signed by all the executors or administrators; but no matter what instructions are then given, any executor can revoke them at any time, and the banker is bound to take notice of such revocation.

**254. Trust Accounts.**—With regard to Trust Accounts, the general principle of treatment by the banker is that he must not knowingly be a party to a breach of trust. That is to say, if a customer places money that the banker knows is trust money in his charge, the banker must not allow the customer to draw out the money for a purpose obviously inconsistent with the customer's duties as a trustee. The banker must not act upon mere suspicion. Before

refusing to honour his customer's cheques he must have substantial grounds for believing that a breach of trust is intended.

Cheques drawn in favour of a trust, whether crossed or uncrossed, must not be credited to the trustees' (or executors') private account, or the banker will make himself liable for any misappropriation on the ground of negligence.

Trustees, unlike executors, have no individual powers. They must all act together, and they cannot delegate their authority to any other person, even to one of themselves. Consequently, all must join in the signing of cheques, save where it is expressly provided for in the trust deed that one may sign on behalf of the others. Countermand of payment of a cheque may be effectively made by any one of the trustees, and the banker is bound to take notice of such countermand.

**255. Public Accounts.**—*Local Authorities.*—The Local Authorities Act, 1908, s. 2 (a), defines a local authority as a council of a County, Borough, Urban District, Rural District, or Parish, and a joint committee, or joint board of any two or more such councils, to which any of the powers or duties of the appointing councils may have been transferred or delegated under the provisions of any Act of Parliament or Provisional Order; and a Parish Meeting under the provisions of the Local Government Act, 1894.

These public bodies are strictly controlled by various statutes, the principal being the Public Health Act, 1875, the Municipal Corporations Act, 1882, and the Local Government Acts, 1888, 1894, and 1933. Every authority must appoint a Treasurer to receive and pay out all moneys controlled by the authority. The Treasurer must not (except in the case of a Parish Council) be a member of the Council, and must give sufficient security for the faithful execution of his duties.

The cheques must be drawn on the Treasurer, and, in the case of Boroughs, Urban and Rural District Councils, must be signed by three members of the Council, and countersigned by the Clerk, or by a deputy approved by the Council. The proper form of the account is "John Smith, Esq., Treasurer of the Mayor, Aldermen and Burgesses of the Borough of Blanktown," not "The Mayor, etc., in account with the Blanktown Bank, Ltd." The procedure in regard to County authorities is the same. A Parish Council may appoint either one of their own number, or any other fit person to act as Treasurer, who must give such security as is required by the regulations. In the case of Parish Councils, all cheques must be

signed by two members of the Council and countersigned by the Clerk. Generally, the Treasurer is the manager of a local bank, but in some of the large towns there is an official appointed to this post.

The officials—rate collectors, etc.—of the local authority, who collect the revenues, pay all amounts direct into the Treasurer's account at the bank. Separate accounts must be kept for each separate undertaking of the authority, as, for example, “Electricity Supply a/c,” “General Purposes a/c,” “Water Supply a/c,” etc. Neither the local authority nor the bank is entitled to amalgamate the various accounts, *i.e.* neither is entitled to set-off a debit balance, say, on the Electricity Account against a credit balance, say, on the General Purposes Account (*Attorney-General v. Corporation of West Ham*, 1910).

It should be noted that the orders for payment are drawn upon the Treasurer and not upon the bank at which the moneys received are paid in by the various officials. For example, the orders to pay run somewhat as follows: “To John Smith, Esq., Treasurer of the Blankshire Urban District Council at the City Bank, Ltd., Pay — or *order* the sum of — and charge the same to the account of the said Urban District Council.” The Local Government Board insist that the orders must be payable *to order*, and not *to bearer*. These orders are presented by the payees to the bank for payment. If the orders are not signed as laid down, then the Treasurer is furnished with a list of payments, duly signed by members of the Council and countersigned by the Clerk, authorising him to pay orders for each amount specified in the statement, when the orders are presented to him. The orders for payment must be duly stamped, and, according to the Inland Revenue authorities, it would appear that stamps must be put on this list for each payee's name on the list.

Since these orders must be drawn on the Treasurer and not on the bank, they are not cheques within the meaning of s. 60, Bills of Exchange Act, 1882, which section protects a banker paying under a forged indorsement. Moreover, not being cheques, they cannot be effectively crossed.

If, therefore, one of these documents is paid on a forged indorsement, there arises the question of the Treasurer's position, both as regards the local authority and the true owner. The Treasurer's mandate was to pay a certain named person. This he has not done. Fortunately, however, for the Treasurer, it was held

in an old case that as the account was opened and kept for the benefit of the authority, it was only reasonable that the Treasurer should be entitled to the same protection against the authority as a banker. Hence, if the Treasurer is able to maintain this position, he can debit the authority with the amount. It should be noted that if the documents are conditional, as is frequently the case, the statutory protection is excluded,

It is not possible to state precisely what is the extent of the Treasurer's liability to the true owner, owing to the absence of definite legal decisions on the point.

With regard to the banker who collects such a document bearing a forged indorsement, there is no protection whatever. The document is not a cheque, and therefore cannot be effectively crossed. Consequently, the banker is excluded from the protection of s. 82 Bills of Exchange Act, 1882. Moreover, as the documents are not drawn upon a banker, s. 17, Revenue Act, 1883, does not cover them. (See also *Conditional Orders to Pay*, p. 195)

## CHAPTER XVII

### BILLS DISCOUNTED AND ADVANCES

**257. Bills Discounted.**—Bills Discounted form an important part of the banker's assets. Such bills are the absolute property of the banker, since to "discount" a bill means to buy it. In practice, the banker credits his customer with the face amount of the bill, and debits him with interest on the amount for the period the bill has to run. Thus, in the case of a bill for £1,000 due in three months' time, the customer would be credited with £1,000, and, taking interest at 6 per cent., debited with £15. This charge is the banker's remuneration for waiting three months for the repayment of his money.

Discounting a bill must be distinguished from the pledging of a bill. When a banker takes a bill as security he, as pledgee, has only an interest in the bill equal to the amount he has advanced against it. He is, according to the Bills of Exchange Act, 1882, s. 27 (3), a holder for value to the extent of the sum for which he has a lien. The bill remains the property of the pledgor, and the banker must account to him for any surplus over the amount of the advance. In the case of a discounted bill, the discounter is a holder for full value, and is entitled to retain the whole proceeds of the bill.

When a banker is asked to discount a bill for a customer, his first consideration is the financial position of the customer, together with that of the drawer (if his customer is not the drawer) and the acceptor, and other parties to the bill, if any. So far as his own customer is concerned, the banker can, from his knowledge of the account, form an opinion of the customer's financial stability, while, as regards an acceptor, who banks with another bank, an inquiry can be made of that bank respecting his suitability as an acceptor. Furthermore, if the banker has discounted bills for this particular customer on previous occasions, his records will show the usual

fates of such bills, and perhaps of bills accepted by this particular acceptor.

Having satisfied himself in regard to the financial resources of the parties, the next step is the consideration for which the bill is drawn. Only genuine trade bills should be discounted. A genuine trade bill is one which is accepted for value and given in a transaction which it is usual to settle by means of bills. Thus, a bill drawn by a wholesale merchant on a retail tradesman would, in the general way, be a suitable bill for discount, but a bill drawn by the retail tradesman on one of his customers would not be satisfactory. It is not usual for retail tradesmen to be paid in this way. The tradesman can justifiably expect to sell either these goods or others during the currency of the bill, but the tradesman's customer is the final consumer, and cannot look to the goods to provide the necessary funds. For an analogous reason, bills drawn against such things as fixtures or machinery, which form part of the acceptor's fixed capital, are not suitable for discounting.

Another kind of bill not suitable for discount by a banker is an accommodation bill. This is a bill in which a person has signed as drawer, acceptor, or indorser, not with the intention of receiving value therefor, but for the purpose of lending his name to some other person. Even if the banker is aware of the fact, he can enforce payment against the accommodation party, but such bills are not satisfactory.

When discounting a bill, the banker must see that it is in order as regards its form, stamp, acceptance and indorsements. It is essential that the signature of the customer for whom the bill is discounted should appear on the bill. This will be either as drawer or indorser. Otherwise, if he be only a transferor by delivery, he will not be liable on the bill in the event of its dishonour, unless it happens to be a forgery. In the latter case he is liable under s. 58 (3) Bills of Exchange Act, 1882 (*q.v.*).

If a discounted bill is dishonoured and the customer's balance is not sufficient to meet it, notice of dishonour, together with a request for payment, should be sent to the customer and to all parties liable on the instrument. The banker should keep possession of the bill, retaining any credit balance on the customer's account. The bill, in such cases, must be debited to a suspense account, entitled "Past Due Bills" or "Bills Unpaid," etc. A foreign bill must be noted or protested, and, where the bill is an inland bill, it may be desirable to note it.

258. *Entries.*—Having agreed to discount a bill, which is found to be in order, the banker will put it through his books. Immediately on receipt, bills for discount are entered in the Bills Discounted Register, Bills Discounted Journal, or some such book with a similar title and use. The book is ruled to contain full details, such as names of customer, drawer, and indorser, date drawn, currency, due date, amount, number of days to run, rate and amount of discount. Each bill is given a distinctive number, which is written on the bill and recorded in the appropriate column in the Register. The bills are then put through a Bills Discounted Ledger, with an account for each customer for whom bills have been discounted. This ledger account enables the banker to see at a glance how much paper he has discounted for each customer, and to restrict discounting when the arranged limit is reached, or when the banker thinks he has as much paper running as the customer's financial position warrants. When a bill matures and is duly paid, it is taken out of this account.

All bills discounted are entered in a Bill Diary, to ensure prompt presentation on maturity. All the bills maturing on the same day are entered on the same page, and, when the due date arrives, are duly presented for payment. Another important book in this connection is the Acceptor's Ledger, in which accounts are kept in the name of each acceptor, with details of each bill bearing his acceptance. This enables the banker to see the amount he has running against each acceptor. Brief extracts of reports obtained as to the acceptor's standing and responsibility are entered in this book, together with the date and source of the report. If a bill is withdrawn or dishonoured, the fact is duly recorded for future guidance.

We have now dealt with the principal books through which bills discounted are passed. Each bank has its own particular system and titles, but the main principles are the same. All bills discounted are debited to a General (or Principal) Ledger Account, Bills Discounted, which is credited on the maturity of the bills. It follows that the total bills outstanding in either the Acceptors' Ledger or the Bills Discounted Ledger must agree with the balance of this General Ledger Account. Another General Ledger Account is Discount Account, to which is credited the discount charged on bills. Since a banker, when discounting a bill, credits to this account the whole of the discount charged, he must make a reserve for those of his discounted bills which have not matured when his half-yearly Profit and Loss Account is made up. This item appears either in

the Profit and Loss Account, or on the liabilities side of the Balance Sheet as " Rebate on bills not due." The reason for this is that the discount on a bill is not fully earned until the bill has matured.

**259. Advances.**—Since the greater part of a banker's funds consist of moneys received on current or deposit accounts repayable on demand, or on deposit accounts repayable at short notice, he must employ them in such a way that he can readily realise them if necessary.

Accordingly, the first canon of sound banking is that the advances should be of a temporary nature and be repayable on demand. Hence, the customer must not use the money for purchasing fixed assets, such as buildings and machinery, or for providing himself with the floating capital required to carry on his business. Loans of this nature should be raised on mortgage from persons desiring long-dated or permanent investments. Banking loans are better suited for meeting a temporary shortage of cash, due to seasonal purchases or the like. Another axiom of banking is that it is better to advance small sums to many customers than large sums to few. Indeed, the lending of too large a proportion of their assets in one or two big advances has ruined or severely crippled not a few bankers.

When a customer asks for a loan, the banker's first inquiries are directed to the amount, the time, and purpose for which the loan is required, the means of re-payment, and the security offered. As regards security, although some advances may justifiably be made without this safeguard, it is the practice of bankers to require security, and quite rightly, as they hold such vast sums belonging to the public that they are bound to take every precaution lest they should jeopardise their solvency by making hazardous unsecured advances. Furthermore, the profit made on such advances is not sufficient to compensate them for the risk involved.

When considering an application for an advance, the banker will give due regard to : (1) The record and value of the account and its connections, (2) the nature of the applicant's business, (3) the personal character of the applicant. Whenever possible, the applicant's balance sheet should be obtained. A properly prepared balance sheet, together with the replies to the points mentioned in the previous paragraph, will enable the banker to see if the proposed advance is likely to be of any real assistance to the borrower. If his cash liabilities are out of proportion to his cash assets plus the proposed loan, then it is evident that any advance will merely postpone, temporarily, the evil day, and, sooner or later, the banker will have to stop an unsatisfactory account and realise his security.

## CHAPTER XVIII

### SECURITIES FOR ADVANCES

**260. Classes of Securities.**—A banker has many different kinds of securities submitted to him as cover for advances to customers. The kind of security depends largely on the location of the borrower, and the kind of business conducted by him. Thus it would be quite the usual thing for a Manchester merchant to offer shipping documents, whereas a borrower in a country town would be more likely to submit title deeds. As a banker avoids advancing too large a proportion of his funds against any one class of security, it is a great advantage for him to have numerous branches all over the country, because he is thus enabled to spread his advances over various trades and industries.

The principal types of security taken from borrowers are : stocks and shares, guarantees by responsible parties, title deeds to landed property, life policies and documents of title relating to merchandise. The chief characteristics of these various kinds of securities will be explained in this chapter. Readers who require fuller information than can be given in an elementary treatise are referred to the author's *Practice and Law of Banking*.

**261. Lien, Pledge, and Mortgage.**—There are three ways in which securities may be made available, viz. by (1) lien, (2) pledge, and (3) mortgage. In each case the banker does not become the absolute owner of the property, but has certain rights over the property until the debt due to him is repaid. In an ordinary lien the borrower is still the owner of the property, but the creditor is in actual or constructive possession of the property. Generally speaking, he has no right of sale. The expression, "constructive possession," means that which may be implied as equivalent to actual possession. Lien, therefore, may be defined as the right to retain property until the debt in respect of which the lien was created has been

repaid. "Bankers' Lien" is much stronger than an ordinary lien, and, as its importance merits, is treated separately and fully later in this chapter.

In a pledge or pawn, the pledgee, or pawnee, *i.e.* the person to whom a thing is pledged or pawned, is entitled to possession of the property until the debt is discharged, and the pledgee has, in certain circumstances, the power of sale. The ownership of the property remains in the pledger, but he cannot claim possession until he has satisfied the pledgee's rights. Pledge may be defined as the actual or constructive handing over of property by the borrower to the lender as security for the due repayment of a debt.

In a legal mortgage, a special interest passes conditionally to the mortgagee, *i.e.* the person to whom property is mortgaged. The mortgagee has the right of sale, but not necessarily of possession, as, for example, when a person mortgages the house he is occupying. A legal mortgage may be defined as a transfer by the mortgagor to the mortgagee of a special legal interest in property as security for money lent by the mortgagee, subject to the mortgagor's right to have the transfer cancelled on repayment of the loan.

The securities to which lien is applicable are mentioned later. Pledge is the appropriate way of obtaining a security over goods and chattels, and fully negotiable securities, such as bearer bonds. Securities which are subject to mortgage are title deeds to landed property, life policies, and stocks and shares.

When securities are deposited with a banker as cover for an advance, the conditions of the deposit are generally set out in an appropriate document of charge, such as a mortgage deed, memorandum of deposit, or letter of hypothecation.

Mortgage deeds are used for charges on landed property and life policies, while a memorandum or letter of deposit is taken over stocks and shares, and over landed property when only an equitable mortgage is being created. The document of charge taken over documentary bills, *i.e.* bills of exchange accompanied by bills of lading relating to shipments of merchandise, is generally called a letter of hypothecation. When the security deposited to secure a borrower's account belongs to another person, it is often termed a "collateral" security. The borrower's own security is sometimes termed a "direct" security.

**262. Bankers' Lien.**—As we have already stated, a lien is the right to retain property belonging to a debtor until he has discharged the debt due to the person retaining the property. A lien

may be either (a) particular, or (b) general. A particular lien arises from the particular transaction connected with the property subject to the lien, while a general lien arises not only out of the particular transaction, but also out of the general dealings between the two parties in respect of other transactions of a similar character.

A banker's lien is a general lien, and covers all securities deposited with him *as banker* by a customer, unless there be an express contract inconsistent with lien. With regard to the latter, securities deposited with a banker for safe custody are not subject to lien. The lien arises over property coming into the banker's possession in the ordinary course of his business as banker of his customer. This would comprise all such documents as bills, cheques, notes, exchequer bills, bonds, coupons, etc. Bankers' lien is for the general indebtedness of the customer, but, if a security has been given to cover a specific advance, the customer, on repaying that advance, is entitled to the return of the security, even though he may be indebted to the banker on other accounts. This is a further example of an "express contract" which excludes lien.

Difficult questions sometimes arise when bonds are deposited with a banker for safe custody, with instructions also to deal with them in some way. Each case depends on its merits, and any banker wishing to rely on such bonds as security should get a letter or memorandum of deposit signed by the customer.

A banker's lien has been defined as an implied pledge (*Branda v. Barnett*, 1846). An ordinary lien does not give a power of sale, whereas a pledge does. The question does not arise in regard to bills, notes, and cheques, by reason of s. 27 (3), Bills of Exchange Act, 1882, which reads as follows: "where the holder of a bill has a lien on it, arising either from contract or by implication of law, he is deemed to be a holder for value to the extent of the sum for which he has a lien." That is to say, as holder for value, provided he took the instrument in good faith, he can sue in his own name the acceptor and other parties to the bill, notwithstanding that his customer has a defective title to the bill. The banker can sue on the whole bill, but if his debt is less than the amount received in respect of the bill, he must hand over the surplus to his customer, or to the true owner, if his customer's title is defective. But if he claims under a forged indorsement he has, by s. 24 of the same Act, no right to retain the instrument or to enforce payment against any party thereto.

In the absence of agreement to the contrary a banker has a lien on all bills and cheques paid in for collection by his customer.

**263. Guarantees.**—A guarantee is a written promise made by one person to be collaterally answerable for the debt or default of another person. A guarantee must be evidenced by some note or memorandum in writing, signed by the person to be held responsible.

The essential characteristic of a guarantee is that the guarantor (or, as he is often called, the surety) is only *collaterally* answerable; the person for whose account the guarantee is given, generally called the principal debtor, is *primarily* liable. The guarantor's liability only arises when the principal debtor fails to repay his debt.

The contract of guarantee must be distinguished from a contract of *indemnity* or a *novation* of the debt. A contract of indemnity arises in such cases as the following: Smith agrees with Brown, a shopkeeper, that if Brown will let Robinson have certain goods, he (Smith) will see that Brown is paid for them. Such a promise need not be in writing to be enforceable against Smith. In regard to novation, if Smith agrees with Brown that if Brown will release Smith's friend Robinson from his liability, he (Smith) will pay the debt, this is a novation of the debt, *i.e.* a substitution of a new debtor for the original debtor.

A guarantee given by two or more individuals should be worded so that the parties are jointly and severally (*i.e.* separately) liable for the amount of the guarantee. And a guarantee should be a *continuing* one, that is, should be expressed to cover the fluctuating balance of a current account from time to time. It should also include interest and all usual banker's charges.

If any change occurs in the state of the account, as by the death, bankruptcy, or insanity of the person or persons whose accounts are guaranteed, or of similar events happening to the guarantor, or any of the guarantors, if more than one, the guaranteed account should be stopped, and any future entries put through a new account for which the banker cannot hold the guarantors responsible.

Guarantees under hand must be stamped sixpence as agreements. If the stamp is an adhesive one, the first signatory must write his signature across it. If impressed, the stamp may be added any time within 14 days of the date of the document. Guarantees under seal require an *ad valorem* stamp of 2s. 6d. per cent., which may be impressed within 30 days after date of the deed.

The value of a guarantee as security depends on the continued solvency of the guarantor, and the banker should make periodical inquiries, not less often than annually, respecting the financial position of all guarantors.

**264. Stock Exchange Securities.**—This term covers all such documents as debentures, bonds, scrip, stock and share certificates issued by joint stock and other companies, by public authorities and by governments. They are a very suitable kind of security for a banker, as (1) they are, in the general way, readily realisable ; (2) they are transferable easily and at little cost ; (3) their present market value can usually be readily ascertained ; (4) some are fully negotiable—a most valuable quality from a banker's point of view.

Stock Exchange securities are divided into two main groups, (1) fully negotiable and (2) non-negotiable securities. The latter are sub-divided into inscribed and registered securities.

A security can only be said to be fully negotiable when the absolute ownership of the property represented by the document vests in the holder so that (1) he is not prejudiced by any defect in his transferor's title, and (2) he can sue on the document in his own name. Ownership of such securities may be transferred by indorsement and delivery, or by mere delivery. The latter type are negotiable in the fullest sense of the word. Such a document may have been stolen, yet a pledgee, who takes it in good faith and for value, has an indisputable title to it against the whole world. Examples of fully negotiable securities are bonds or scrip payable to bearer, Exchequer Bonds and Treasury Bills.

Inscribed stocks are so called because the holders of these stocks and the amount of their holdings are inscribed, *i.e.* recorded, in the books of the particular bank through which all dealings in the stocks are transacted. The holders do not receive a certificate of title, but merely a "stock receipt" for the purchase money. This stock receipt has no value, and need not be produced when the stock is sold. To this class belong Consols, certain British Government Funds and many Corporation and Colonial Government Stocks. In the case of the recent issues of the British Government, the holder may be registered and have a certificate or be inscribed.

The property in registered securities is evidenced by a certificate, and this class includes nearly all the securities issued by joint stock companies except debentures and share warrants payable to bearer.

A memorandum of deposit or an agreement should always be taken by the banker when Stock Exchange securities are lodged as cover for advances. The memorandum must be stamped 6d., which may be adhesive, or impressed within 14 days of the date of the document.

Where the securities are fully negotiable, no other document is required. But where they are inscribed or registered securities, the banker can only obtain a complete title by having the securities registered in his own name, or the names of his nominees. In regard to the latter, joint stock banks do not register such securities in the bank's name, but in the names of two senior officials.

In regard, however, to registered securities, an equitable mortgage can be obtained by deposit of the share certificate—the banker protecting himself by taking a memorandum of deposit (or agreement) and a transfer in favour of the banker or his nominees, executed by the registered holder of the shares. This transfer is not registered except in order to realise or to render the security more perfect. Notice of the bank's interest, called "notice of lien," is given to the issuing company.

Bankers do not register themselves as holders of shares which are not fully paid up, as by registering they would become liable for any calls which might be made.

A "blank transfer" is a transfer which is lacking in some of the details necessary to render it complete and ready for registration by the company or authority concerned, as *e.g.* the transferee's name.

A debenture is a document issued by a company (or other corporate body) acknowledging the indebtedness of the company either to the bearer, or to the registered holder of the document. A debenture is sometimes secured by a specific charge on certain assets or revenues. If secured by a charge over property of the company, it is called a mortgage debenture. Sometimes a debenture contains a "floating charge" over the company's property. A floating charge has been defined as an equitable charge on the assets for the time being of a going concern.

**265. Life Policies.**—A life policy is a very general form of security for advances up to the surrender value of the policy. The "surrender value" is the amount which the issuing company will pay to cancel the policy. This amount can be obtained from the company upon application. A life policy is a security which increases

in value the longer it is held. It also forms a useful supplementary security, as in the event of the death of the person assured, the capital value is at once received.

A "whole life" policy is one which is payable on the death of the assured person, while an "endowment" policy is one which is payable after the expiration of a stated number of years or on the assured's death if it occurs before the expiration of the stated period.

The general method of obtaining a security over a life policy is assignment by way of mortgage. Notice of the execution of this deed should be given to the insurance company, after which the company will not pay over moneys under the policy except to the banker.

The banker should see that the premiums are duly paid as and when they fall due. The assured person's age should be "admitted" by the company. This is necessary because the premium is based on the age stated by the assured, and until a birth certificate or other satisfactory evidence of age has been produced, the company will not pay the amount of the policy.

**266. Title Deeds.**—Title deeds to landed property are often offered to bankers as security for advances, particularly in country districts.

In theory, all land in this country is held by tenure from the Crown, and the greatest interest a subject can have is that of a freeholder. This, in practice, however, is equivalent to absolute ownership. If a freeholder grants the land to a person for a term of years, he is termed the *lessor*, and the person in whose favour the lease is granted is a *lessee*. The lessee's interest in the land is known as *leasehold*. After the agreed number of years have expired, the land reverts to the original lessor (or his heirs or assigns). The term "land" includes all buildings, trees, growing produce, etc., on it.

A banker obtains a security over landed property in one of two ways: (a) by a legal mortgage, (b) by an equitable mortgage. The latter kind may be effected by a deposit of the title deeds, with or without a memorandum of deposit. The former is the more usual method.

In a legal mortgage, a legal estate or interest in the land is created by deed in favour of the mortgagee as a security for the payment of money due or to become due, subject to the mortgagor's right of redemption. The mortgagor (*i.e.* the borrower) is the real owner of the land. The lender is called a mortgagee. On repayment of

the loan, the mortgage is received by the mortgagor. The mortgage deed forms part of the chain of title deeds, and must be preserved with the deeds.

Bankers have their own forms of mortgage, and these usually make the moneys advanced repayable on demand. A legal mortgagee has power of sale. The right to *foreclose*, *i.e.* the mortgagee's right to deprive a defaulting mortgagor of his entire interest in the mortgaged property, can only be exercised after application to the Court, and the effect is to make the mortgagee the *absolute owner* of the land. Until the land has been sold or foreclosure has taken place, the mortgagor has always the right to redeem his property by paying off the loan, when the mortgage is discharged.

The mortgagor may create a second or third mortgage on his property; such mortgages are not suitable for a banker's security. The value of a second mortgage depends on the margin of value left after satisfying the principal and interest of the first mortgagee. In the event of the latter having to realise his security, he is not bound to consider the interests of any other parties, and a forced sale may result in little or no margin of value over the amount of the first mortgage. There is also the possibility that arrears of interest may be due to the first mortgagee.

Whenever landed property is taken as security, the deeds should be accompanied by a Fire Policy covering the value of all buildings there may be on the land. The policy should either be in the banker's name or indorsed by the issuing company with a note of his interest.

**267. Documents of Title to Goods.**—Goods and merchandise may be taken as security for advances. This is effected, not by taking actual delivery of the goods, but by the pledge of certain documents which represent the goods, or by getting the persons with whom the goods are stored to register the banker as holder. The most familiar of these documents are explained below.

A *Bill of Lading* is a document issued by and signed by, or by the authority of, a ship's captain, acknowledging that the goods described in the bill have been duly received on board, and undertaking to deliver the goods in the like order and condition as received to the consignee, or to his order or assigns, provided the freight and any other charges specified in the bill of lading have been duly paid.

Briefly, a bill of lading is the contract between the shipowners

and the shippers of goods, and also the document of title to the goods whilst they are at sea. By means of a bill of lading the goods can be sold or otherwise dealt with while still on the sea. Bills of lading pass by indorsement. They are usually drawn in sets of three. Two of the parts are usually sent by different mails to the consignee, or to the bank handling the relative bills of exchange, while the third is retained by the shipper or banker. A bill of lading for goods to be *exported* or carried coastwise must be stamped 6d. before execution. Bills of lading for goods *imported* are not subject to stamp duty.

The following is a simple form of bill of lading.

BILL OF LADING (*Simple Form*).

(Stamp 6d.).

SHIPPED in good Order and well conditioned by ..... in and upon the good Steam Ship called the ..... whereof ..... is Master for the present Voyage and now lying in ..... and bound for .....

..... being marked and numbered as in the Margin, and are to be delivered in the like good Order and well conditioned at the aforesaid Port of ..... (The Act of God, the King's Enemies, Fire, Machinery, Boilers, Steam, and all and every other Dangers and Accidents of the Seas, Rivers and Steam Navigation, of whatever nature and kind soever excepted) unto ..... or to ..... Assigns ..... Freight for the said Goods ..... with primage and Average accustomed.

IN WITNESS whereof the Master or Purser of the said Ship hath affirmed to ..... Bills of Lading all of this Tenor and Date the one of which Bills being accomplished the others to stand void.

Dated in London, ..... 19...

Weight and contents unknown.

For the Master.

*A Dock Warrant* is a document given by a dock company, warehouse keeper or wharfinger, in exchange for goods deposited. The document describes the goods, acknowledges the receipt of them, and undertakes to deliver them to the order of the depositor.

A dock warrant can only arise after the goods have reached their destination and have been duly landed. It must be stamped with a 3d. stamp, impressed or adhesive. If the stamp is adhesive, it must be cancelled.

The following is a form of Dock Warrant :—

DOCK WARRANT.

(Stamp 3*u.*).

No. .... ..... Docks, Co.  
19...

Warrant for ..... imported in the ship .....  
Master ..... from ..... entered by .....  
on the ..... deliverable to ..... or assigns by in-  
dorsement hereon. Rent commences on the ..... and all other  
charges from the date hereof.

Rate charged.

WEIGHT.

MARK.

NUMBERS.

ROSS.

TARE.

Ledger No. .... Folio.....  
....., Clerk.  
....., Warrant Clerk.

A *Warehouse-Keeper's Certificate* is a document given by a ware-  
house-keeper certifying that he holds the goods described in the  
certificate and awaits instructions for their disposal from the person  
to whom the certificate is addressed. It is simply a receipt for the  
goods and indicates on the face of it that it is not transferable. It  
must be stamped 3*d.*

The following will serve as an example :—

WAREHOUSE-KEEPER'S CERTIFICATE.

No. ....

(Stamp 3*d.*).

Not transferable.

MESSRS. ....

We hold at your disposal in our warehouse as per conditions on back  
hereof ..... ex S.S. ....

.....  
Warehouse-keeper.

(Conditions as to issue of delivery orders, payment of rent, etc., indorsed.)

If the owner wants to get the goods out of the warehouse, he  
must issue a Delivery Order, or obtain a warrant from the ware-

house-keeper by which the goods can be made deliverable either to himself, or to his assigns by indorsement.

*A Delivery Order* is a document containing the owner's instructions respecting delivery, addressed to the proprietors of the warehouse where the goods are lodged.

The following is an example:—

DELIVERY ORDER.

London,

No. .... ..... 19...

To .....

Please deliver to ..... the undernoted goods, entered by ..... on ..... in the ship ..... Captain ..... from ..... Charges from ..... to be paid .....

Mark.

No. ....

Contents.

The documents of title enumerated in the foregoing are divided into two distinct classes: (1) bills of lading, certain transferable warrants, and (2) certain other transferable warrants, warehouse-keepers' certificates or receipts, and delivery orders. The possession of a bill of lading or a transferable warrant of the first class is equivalent to actual possession of the goods, always provided that the documents have been received *bona fide*. No title can be obtained under a document which has been stolen. Possession of documents of the second class does not pass a complete title, and the banker must have the goods registered in his own name before the security can be said to be complete.

With regard to transferable warrants, only those issued by dock companies and warehouse-keepers who have obtained authority to do so under special Act of Parliament pass, strictly speaking, a complete title. Those issued by other companies not so authorised should not be held, and the banker should at once have himself registered as holder. If he does not do so, there is a danger that, on the bankruptcy of the owner of the goods, they may be held to pass to the trustee in bankruptcy. In many cases, however, it is not the practice to make any distinction.

A memorandum of deposit or letter of hypothecation should always be signed by the borrower, and the banker should see that the goods are adequately insured against marine risks where a bill of lading is concerned, and against fire in other cases.

Advances against bills of lading are generally made in connection with documentary bills which are explained below.

268. *Documentary Bills*.—A documentary bill is a bill of exchange which is accompanied by the documents of title to the goods for which it is drawn. The document of title is usually a bill of lading, and the other documents are the shipper's invoice and marine insurance policy. The banker should examine the documents to see that they purport to be what they ought to be, but he is not responsible for their genuineness. Insurance policies must be duly stamped. If received from abroad, they must be stamped within 10 days of their arrival in the United Kingdom. When the bills are to be sent abroad, the banker should see that the foreign customs' requirements in the way of certificates of origin, attested invoices, etc., are complied with.

The chief ways in which documentary bills drawn against exports come into a banker's hands are for collection or negotiation. In the case of import bills, bankers frequently handle them under documentary acceptance credits (see also p. 189).

Documentary bills are sometimes marked "Documents upon acceptance" (D/A) or "Documents upon Payment" (D/P), which means, respectively, that the documents are to be given upon acceptance or payment of the relative bill of exchange. These phrases inserted in a documentary bill do not infringe s. 3, Bills of Exchange Act, 1882, which says that the order to pay must be unconditional. When a documentary bill is presented for acceptance, the drawee has the right to inspect the documents, but he has no right to detain them unless the bill is a D/A bill and he accepts the bill. The banker, therefore, should not leave the documents with the drawee unless the drawer has expressly authorised him to do so. In the case of D/P bills, it is usual to leave a notice with the drawee informing him that the bills can be inspected at the bank.

If the drawee accepts the bill in the following form, "Accepted payable on delivery of the bill of lading," he accepts it conditionally, and by s. 44, Bills of Exchange Act, 1882, the drawer and any indorser prior to acceptance, who does not expressly or impliedly authorise the banker to take a qualified acceptance, or does not subsequently do so, is discharged from all liability on the bill. Hence the consent of all prior parties must be obtained.

If the documents are to be released to the acceptor only on payment of the bill, it is the custom to hand them over on payment

of the bill under rebate, calculated at half per cent. above the current deposit rate of the London joint stock banks. A receipt should be indorsed on the back of the bill stating at what rate per cent. rebate has been allowed. The rebate is calculated from the date when the cheque given in payment is actually cleared to the due date of the bill.



## APPENDIX I

### BILLS OF EXCHANGE ACT, 1882.

(45 & 46 VICT. c. 61)

*An Act to codify the law relating to Bills of Exchange, Cheques, and Promissory Notes.* (18th August, 1882.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

#### PART I.—PRELIMINARY.

1. This Act may be cited as the Bills of Exchange Act, 1882. Short title.

2. In this Act, unless the context otherwise requires,—  
“Acceptance” means an acceptance completed by delivery or notification.

Interpretation of terms.

“Action” includes counter claim and set off.

“Banker” includes a body of persons whether incorporated or not who carry on the business of banking.

“Bankrupt” includes any person whose estate is vested in a trustee or assignee under the law for the time being in force relating to bankruptcy.

“Bearer” means the person in possession of a bill or note which is payable to bearer.

“Bill” means bill of exchange, and “note” means promissory note.

“Delivery” means transfer of possession, actual or constructive, from one person to another.

“Holder” means the payee or indorsee of a bill or note who is in possession of it, or the bearer thereof.

“Indorsement” means an indorsement completed by delivery.

“Issue” means the first delivery of a bill or note, complete in form to a person who takes it as a holder.

“Person” includes a body of persons whether incorporated or not.

“Value” means valuable consideration.

“Written” includes printed, and “writing” includes print.

#### PART II.—BILLS OF EXCHANGE.

##### *Form and Interpretation.*

3.—(1) A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving

Bill of exchange defined.

it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order of a specified person, or to bearer.

(2) An instrument which does not comply with these conditions, or which orders any act to be done in addition to the payment of money, is not a bill of exchange.

(3) An order to pay out of a particular fund is not unconditional within the meaning of this section; but an unqualified order to pay, coupled with (a) an indication of a particular fund out of which the drawee is to re-imburse himself or a particular account to be debited with the amount, or (b) a statement of the transaction which gives rise to the bill, is unconditional.

(4) A bill is not invalid by reason—

(a) That it is not dated;

(b) That it does not specify the value given, or that any value has been given therefor;

(c) That it does not specify the place where it is drawn or the place where it is payable.

**Inland and  
foreign bills**

4.—(1) An inland bill is a bill which is or on the face of it purports to be (a) both drawn and payable within the British Islands, or (b) drawn within the British Islands upon some person resident therein. Any other bill is a foreign bill.

For the purposes of this Act "British Islands" mean any part of the United Kingdom of Great Britain and Ireland, the islands of Man, Guernsey, Jersey, Alderney, and Sark, and the islands adjacent to any of them being part of the dominions of Her Majesty.

(2) Unless the contrary appear on the face of the bill the holder may treat it as an inland bill.

**Effect where  
different  
parties to  
bill are the  
same person.**

5.—(1) A bill may be drawn payable to, or to the order of, the drawer; or it may be drawn payable to, or to the order of, the drawee.

(2) Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or as a promissory note.

**Address to  
drawee**

6.—(1) The drawee must be named or otherwise indicated in a bill with reasonable certainty.

(2) A bill may be addressed to two or more drawees whether they are partners or not, but an order addressed to two drawees in the alternative or to two or more drawees in succession is not a bill of exchange.

**Certainty  
required as  
to payee.**

7.—(1) Where a bill is not payable to bearer, the payee must be named or otherwise indicated therein with reasonable certainty.

(2) A bill may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees. A bill may also be made payable to the holder of an office for the time being.

(3) Where the payee is a fictitious or non-existing person the bill may be treated as payable to bearer.

8.—(1) When a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties thereto, but is not negotiable. What bills are negotiable

(2) A negotiable bill may be payable either to order or to bearer.

(3) A bill is payable to bearer which is expressed to be so payable, or on which the only or last indorsement is an indorsement in blank.

(4) A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable.

(5) Where a bill, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.

9.—(1) The sum payable by a bill is a sum certain within the meaning of this Act, although it is required to be paid—

(a) With interest.

(b) By stated instalments.

(c) By stated instalments, with a provision that upon default in payment of any instalment the whole shall become due.

(d) According to an indicated rate of exchange or according to a rate of exchange to be ascertained as directed by the bill,

(2) Where the sum payable is expressed in words and also in figuros, and there is a discrepancy between the two, the sum denoted by the words is the amount payable.

(3) Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, interest runs from the date of the bill, and if the bill is undated from the issue thereof.

10.—(1) A bill is payable on demand—

(a) Which is expressed to be payable on demand, or at sight, Bill payable on demand. or on presentation; or

(b) In which no time for payment is expressed.

(2) Where a bill is accepted or indorsed when it is overdue, it shall, as regards the acceptor who so accepts, or any indorser who so indorses it, be deemed a bill payable on demand.

11. A bill is payable at a determinable future time within the meaning of this Act which is expressed to be payable— Bill payable at a future time.

(1) At a fixed period after date or sight.

(2) On or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening may be uncertain.

An instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect.

12. Where a bill expressed to be payable at a fixed period after date is issued undated, or where the acceptance of a bill payable at a fixed period after sight is undated, any holder may insert

Omission of date in bill payable after date.

therein the true date of issue or acceptance, and the bill shall be payable accordingly.

Provided that (1) where the holder in good faith and by mistake inserts a wrong date, and (2) in every case where a wrong date is inserted, if the bill subsequently comes into the hands of a holder in due course the bill shall not be avoided thereby, but shall operate and be payable as if the date so inserted had been the true date.

Ante-dating  
and post-  
dating.

13.—(1) Where a bill or an acceptance or any indorsement on a bill is dated, the date shall, unless the contrary be proved, be deemed to be the true date of the drawing, acceptance, or indorsement, as the case may be.

(2) A bill is not invalid by reason only that it is ante-dated or post-dated, or that it bears date on a Sunday.

Computation  
of time of  
payment.

14. Where a bill is not payable on demand the day on which it falls due is determined as follows:—

(1) Three days, called days of grace, are, in every case where the bill itself does not otherwise provide, added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace: Provided that—

(a) When the last day of grace falls on Sunday, Christmas Day, Good Friday, or a day appointed by Royal proclamation as a public fast or thanksgiving day, the bill is, except in the case herein-after provided for, due and payable on the preceding business day;

(b) When the last day of grace is a Bank Holiday (other than Christmas Day or Good Friday) under the Bank Holidays Act, 1871, and Acts amending or extending it, or when the last day of grace is a Sunday and the second day of grace is a Bank Holiday, the bill is due and payable on the succeeding business day.

(2) Where a bill is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the day of payment.

(3) Where a bill is payable at a fixed period after sight, the time begins to run from the date of the acceptance if the bill be accepted, and from the date of noting or protest if the bill be noted or protested for non-acceptance, or for non-delivery.

(4) The term "month" in a bill means calendar month.

34 & 35 Vict.  
c. 17.

15. The drawer of a bill and any indorser may insert therein the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonoured by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may think fit.

**16.** The drawer of a bill, and any indorser, may insert therein an express stipulation—

Optional stipulations by drawer or indorser.

(1) Negativ ing or limiting his own liability to the holder :

(2) Waiving as regards himself some or all of the holder's duties.

**17.**—(1) The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer.

Definition and requisites of acceptance.

(2) An acceptance is invalid unless it complies with the following conditions, namely :

(a) It must be written on the bill and be signed by the drawee.

The mere signature of the drawee without additional words is sufficient.

(b) It must not express that the drawee will perform his promise by any other means than the payment of money.

**18.** A bill may be accepted—

(1) Before it has been signed by the drawer, or while otherwise incomplete :

Time for acceptance.

(2) When it is overdue, or after it has been dishonoured by a previous refusal to accept, or by non-payment :

(3) When a bill payable after sight is dishonoured by non-acceptance, and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance.

**19.**—(1) An acceptance is either (a) general or (b) qualified.

General and qualified acceptances.

(2) A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

In particular an acceptance is qualified which is—

(a) conditional, that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated :

(b) partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn :

(c) local, that is to say, an acceptance to pay only at a particular specified place :

An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere :

(d) qualified as to time :

(e) the acceptance of some one or more of the drawees, but not of all.

**20.**—(1) Where a simple signature on a blank stamped paper is delivered by the signer in order that it may be converted into a bill, it operates as a *prima facie* authority to fill it up as a complete bill for any amount the stamp will cover, using the signature for that of the drawer, or the acceptor, or an indorser ; and, in like manner, when a bill is wanting in any material particular, the

Inchoate instruments.

person in possession of it has a *prima facie* authority to fill up the omission in any way he thinks fit.

(2) In order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time, and strictly in accordance with the authority given. Reasonable time for this purpose is a question of fact.

Provided that if any such instrument after completion is negotiated to a holder in due course it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time and strictly in accordance with the authority given.

**Delivery.**

21.—(1) Every contract on a bill, whether it be the drawer's, the acceptor's or an indorser's, is incomplete and revocable, until delivery of the instrument in order to give effect thereto.

Provided that where an acceptance is written on a bill, and the drawee gives notice to or according to the directions of the person entitled to the bill that he has accepted it, the acceptance then becomes complete and irrevocable.

(2) As between immediate parties, and as regards a remote party other than a holder in due course, the delivery—

(a) in order to be effectual must be made either by or under the authority of the party drawing, accepting, or indorsing, as the case may be;

(b) may be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the bill.

But if the bill be in the hands of a holder in due course a valid delivery of the bill by all parties prior to him so as to make them liable to him is conclusively presumed.

(3) Where a bill is no longer in the possession of a party who has signed it as drawer, acceptor, or indorser, a valid and unconditional delivery by him is presumed until the contrary is proved.

*Capacity and Authority of Parties.*

**Capacity of parties.**

22. (1) Capacity to incur liability as a party to a bill is co-extensive with capacity to contract.

Provided that nothing in this section shall enable a corporation to make itself liable as drawer, acceptor, or indorser of a bill unless it is competent to it so to do under the law for the time being in force relating to corporations.

(2) Where a bill is drawn or indorsed by an infant, minor, or corporation having no capacity or power to incur liability on a bill, the drawing or indorsements entitles the holder to receive payment of the bill, and to enforce it against any other party thereto.

**23.** No person is liable as drawer, indorser, or acceptor of a bill who has not signed it as such: Provided that—

Signature  
essential to  
liability.

- (1) Where a person signs a bill in a trade or assumed name, he is liable thereon as if he had signed it in his own name:
- (2) The signature of the name of a firm is equivalent to the signature by the person so signing of the names of all persons liable as partners in that firm.

**24.** Subject to the provisions of this Act, where a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorised signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority.

Provided that nothing in this section shall affect the ratification of an unauthorised signature not amounting to a forgery.

Forged or  
unauthorised  
signature.

**25.** A signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is only bound by such signature if the agent in so signing was acting within the actual limits of his authority.

Procuration  
signatures.

**26.**—(1) Where a person signs a bill as drawer, indorser, or acceptor, and adds words to his signature, indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally liable thereon; but the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability.

Person signing  
as agent or in  
representative  
capacity.

(2) In determining whether a signature on a bill is that of the principal or that of the agent by whose hand it is written, the construction most favourable to the validity of the instrument shall be adopted.

#### *The Consideration for a Bill.*

**27.**—(1) Valuable consideration for a bill may be constituted by—

Value and  
holder for  
value.

- (a) Any consideration sufficient to support a simple contract;
- (b) An antecedent debt or liability. Such a debt or liability is deemed valuable consideration whether the bill is payable on demand or at a future time.

(2) Where value has at any time been given for a bill the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time.

(3) Where the holder of a bill has a lien on it, arising either from contract or by implication of law, he is deemed to be a holder for value to the extent of the sum for which he has a lien.

**28.**—(1) An accommodation party to a bill is a person who has signed a bill as drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person.

Accommoda-  
tion bill or  
party.

(2) An accommodation party is liable on the bill to a holder for value ; and it is immaterial whether, when such holder took the bill, he knew such party to be an accommodation party or not.

**Holder in due course.**

29.—(1) A holder in due course is a holder who has taken a bill, complete and regular on the face of it, under the following conditions ; namely :—

- (a) That he became the holder of it before it was overdue, and without notice that it had been previously dishonoured, if such was the fact :
- (b) That he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.

(2) In particular the title of a person who negotiates a bill is defective within the meaning of this Act when he obtained the bill, or the acceptance thereof, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

(3) A holder (whether for value or not) who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptor and all parties to the bill prior to that holder.

**Presumption of value and good faith.**

30.—(1) Every party whose signature appears on a bill is *prima facie* deemed to have become a party thereto for value.

(2) Every holder of a bill is *prima facie* deemed to be a holder in due course ; but if in an action on a bill it is admitted or proved that the acceptance, issue, or subsequent negotiation of the bill is affected with fraud, duress, or force and fear, or illegality, the burden of proof is shifted, unless and until the holder proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill.

#### *Negotiation of Bills.*

**Negotiation of bill.**

31.—(1) A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill.

(2) A bill payable to bearer is negotiated by delivery.

(3) A bill payable to order is negotiated by the indorsement of the holder completed by delivery.

(4) Where the holder of a bill payable to his order transfers it for value without indorsing it, the transfer gives the transferee such title as the transferor had in the bill, and the transferee in addition acquires the right to have the indorsement of the transferor.

(5) Where any person is under obligation to indorse a bill in a representative capacity, he may indorse the bill in such terms as to negative personal liability.

32. An indorsement in order to operate as a negotiation must comply with the following conditions, namely:—

Requisites of a valid indorsement.

(1) It must be written on the bill itself and be signed by the indorser. The simple signature of the indorser on the bill, without additional words, is sufficient.

An indorsement written on an allonge, or on a "copy" of a bill issued or negotiated in a country where "copies" are recognised, is deemed to be written on the bill itself.

(2) It must be an indorsement of the entire bill. A partial indorsement, that is to say, an indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the bill to two or more indorsees severally, does not operate as a negotiation of the bill.

(3) Where a bill is payable to the order of two or more payees or indorsees who are not partners all must indorse, unless the one indorsing has authority to indorse for the others.

(4) Where, in a bill payable to order, the payee or indorsee is wrongly designated, or his name is misspelt, he may indorse the bill as therein described, adding, if he think fit, his proper signature.

(5) Where there are two or more indorsements on a bill, each indorsement is deemed to have been made in the order in which it appears on the bill, until the contrary is proved.

(6) An indorsement may be made in blank or special. It may also contain terms making it restrictive.

33. Where a bill purports to be indorsed conditionally the condition may be disregarded by the payer, and payment to the indorsee is valid whether the condition has been fulfilled or not.

Conditional indorsement.

34.—(1) An indorsement in blank specifies no indorsee, and a bill so indorsed becomes payable to bearer.

Indorsement in blank and special indorsement.

(2) A special indorsement specifies the person to whom, or to whose order, the bill is to be payable.

(3) The provisions of this Act relating to a payee apply with the necessary modifications to an indorsee under a special indorsement.

(4) When a bill has been indorsed in blank, any holder may convert the blank indorsement into a special indorsement by writing above the indorser's signature a direction to pay the bill to or to the order of himself or some other person.

35.—(1) An indorsement is restrictive which prohibits the further negotiation of the bill or which expresses that it is a mere authority to deal with the bill as thereby directed and not a transfer of the ownership thereof, as for example, if a bill be indorsed "Pay D only," or "Pay D for the account of X" or "Pay D or order for collection."

Restrictive indorsement.

(2) A restrictive indorsement gives the indorsee the right to receive payment of the bill and to sue any party thereto that his indorser could have sued, but gives him no power to transfer his rights as indorsee unless it expressly authorises him to do so.

(3) Where a restrictive indorsement authorises further transfer, all subsequent indorsees take the bill with the same rights and subject to the same liabilities as the first indorsee under the restrictive indorsement.

Negotiation of  
overdue or  
dishonoured  
bill.

**36.**—(1) Where a bill is negotiable in its origin it continues to be negotiable until it has been (a) restrictively indorsed or (b) discharged by payment or otherwise.

(2) Where an overdue bill is negotiated, it can only be negotiated subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which the person from whom he took it had.

(3) A bill payable on demand is deemed to be overdue within the meaning, and for the purposes, of this section, when it appears on the face of it to have been in circulation for an unreasonable length of time. What is an unreasonable length of time for this purpose is a question of fact.

(4) Except where an indorsement bears date after the maturity of the bill, every negotiation is *prima facie* deemed to have been effected before the bill was overdue.

(5) Where a bill which is not overdue has been dishonoured any person who takes it with notice of the dishonour takes it subject to any defect of title attaching thereto at the time of dishonour, but nothing in this sub-section shall affect the rights of a holder in due course.

Negotiation of  
bill to party  
already liable  
thereon.

**37.** Where a bill is negotiated back to the drawer, or to a prior indorser or to the acceptor, such party may, subject to the provisions of this Act, re-issue and further negotiate the bill, but he is not entitled to enforce payment of the bill against any intervening party to whom he was previously liable.

Rights of  
the holder

**38.** The rights and powers of the holder of a bill are as follows:—

(1) He may sue on the bill in his own name:

(2) Where he is a holder in due course, he holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill:

(3) Where his title is defective (a) if he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill, and (b) if he obtains payment of the bill the person who pays him in due course gets a valid discharge for the bill.

#### *General duties of the Holder.*

When pre-  
sentment for  
acceptance is  
necessary.

**39.**—(1) Where a bill is payable after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument.

(2) Where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee it must be presented for acceptance before it can be presented for payment.

(3) In no other case is presentment for acceptance necessary in order to render liable any party to the bill.

(4) Where the holder of a bill, drawn payable elsewhere than at the place of business or residence of the drawee, has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawer and indorsers.

40.—(1) Subject to the provisions of this Act, when a bill payable after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time.

Time for presenting bill payable after sight.

(2) If he do not do so, the drawer and all indorsers prior to that holder are discharged.

(3) In determining what is a reasonable time within the meaning of this section, regard shall be had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case.

41.—(1) A bill is duly presented for acceptance which is presented in accordance with the following rules:—

Rules as to presentment for acceptance, and excuses for non-presentment.

(a) The presentment must be made by or on behalf of the holder to the drawee or to some person authorised to accept or refuse acceptance on his behalf at a reasonable hour on a business day and before the bill is overdue:

(b) Where a bill is addressed to two or more drawees, who are not partners, presentment must be made to them all, unless one has authority to accept for all, then presentment may be made to him only:

(c) Where the drawee is dead presentment may be made to his personal representative:

(d) Where the drawee is bankrupt, presentment may be made to him or to his trustee:

(e) Where authorised by agreement or usage, a presentment through the post office is sufficient.

(2) Presentment in accordance with these rules is excused, and a bill may be treated as dishonoured by non-acceptance—

(a) Where the drawee is dead or bankrupt, or is a fictitious person or a person not having capacity to contract by bill:

(b) Where, after the exercise of reasonable diligence, such presentment cannot be effected:

(c) Where, although the presentment has been irregular, acceptance has been refused on some other ground.

(3) The fact that the holder has reason to believe that the bill, on presentment, will be dishonoured does not excuse presentment.

42.—(1) When a bill is duly presented for acceptance and is not accepted within the customary time, the person presenting it must treat it as dishonoured by non-acceptance. If he do not, the holder shall lose his right of recourse against the drawer and indorsers.

Non-acceptance.

Dishonour by non-acceptance and its consequences.

**43.**—(1) A bill is dishonoured by non-acceptance—

(a) when it is duly presented for acceptance, and such an acceptance as is prescribed by this Act is refused or cannot be obtained ; or

(b) when presentment for acceptance is excused and the bill is not accepted.

(2) Subject to the provisions of this Act when a bill is dishonoured by non-acceptance, an immediate right of recourse against the drawer and indorsers accrues to the holder, and no presentment for payment is necessary.

Duties as to qualified acceptances.

**44.**—(1) The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance may treat the bill as dishonoured by non-acceptance.

(2) Where a qualified acceptance is taken, and the drawer or an indorser has not expressly or impliedly authorised the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer or indorser is discharged from his liability on the bill.

The provisions of this sub-section do not apply to a partial acceptance, whereof due notice has been given. Where a foreign bill has been accepted as to part, it must be protested as to the balance.

(3) When the drawer or indorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time express his dissent to the holder he shall be deemed to have assented thereto.

Rules as to presentment for payment

**45.** Subject to the provisions of this Act a bill must be duly presented for payment. If it be not so presented the drawer and indorsers shall be discharged.

A bill is duly presented for payment which is presented in accordance with the following rules :—

(1) Where the bill is not payable on demand, presentment must be made on the day it falls due.

(2) Where the bill is payable on demand, then, subject to the provisions of this Act, presentment must be made within a reasonable time after its issue in order to render the drawer liable, and within a reasonable time after its indorsement, in order to render the indorser liable.

In determining what is a reasonable time, regard shall be had to the nature of the bill, the usage of trade with regard to similar bills, and the facts of the particular case.

(3) Presentment must be made by the holder or by some person authorised to receive payment on his behalf at a reasonable hour on a business day, at the proper place as herein-after defined, either to the person designated by the bill as payee, or to some person authorised to pay or refuse payment on his behalf if with the exercise of reasonable diligence such person can there be found.

(4) A bill is presented at the proper place—

- (a) Where a place of payment is specified in the bill and the bill is there presented.
- (b) Where no place of payment is specified, but the address of the drawee or acceptor is given in the bill, and the bill is there presented.
- (c) Where no place of payment is specified and no address given, and the bill is presented at the drawee's or acceptor's place of business if known, and if not, at his ordinary residence if known.
- (d) In any other case if presented to the drawee or acceptor wherever he can be found, or if presented at his last known place of business or residence.

(5) Where a bill is presented at the proper place, and after the exercise of reasonable diligence no person authorised to pay or refuse payment can be found there, no further presentment to the drawee or acceptor is required.

(6) Where a bill is drawn upon, or accepted by two or more persons who are not partners, and no place of payment is specified, presentment must be made to them all.

(7) Where the drawee or acceptor of a bill is dead, and no place of payment is specified, presentment must be made to a personal representative, if such there be, and with the exercise of reasonable diligence he can be found.

(8) Where authorised by agreement or usage a presentment through the post office is sufficient.

**46.**—(1) Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate presentment must be made with reasonable diligence.

Excuses for delay or non-presentment for payment.

(2) Presentment for payment is dispensed with,—

(a) Where, after the exercise of reasonable diligence, presentment, as required by this Act, cannot be effected.

The fact that the holder has reason to believe that the bill will, on presentment, be dishonoured, does not dispense with the necessity for presentment.

(b) Where the drawee is a fictitious person.

(c) As regards the drawer where the drawee or acceptor is not bound, as between himself and the drawer, to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented.

(d) As regards an indorser, where the bill was accepted or made for the accommodation of that indorser and he has no reason to expect that the bill would be paid if presented.

(e) By waiver of presentment, express or implied.

**47.**—(1) A bill is dishonoured by non-payment (a) when it is dishonoured by non-payment.

be obtained, or (b) when presentment is excused and the bill is overdue and unpaid.

(2) Subject to the provisions of this Act, when a bill is dishonoured by non-payment, an immediate right of recourse against the drawer and indorsers accrues to the holder.

Notice of dishonour and effect of non-notice.

**48.** Subject to the provisions of this Act, when a bill has been dishonoured by non-acceptance or by non-payment, notice of dishonour must be given to the drawer and each indorser, and any drawer or indorser to whom such notice is not given is discharged; Provided that—

(1) Where a bill is dishonoured by non-acceptance, and notice of dishonour is not given, the rights of a holder in due course subsequent to the omission, shall not be prejudiced by the omission.

(2) Where a bill is dishonoured by non-acceptance and due notice of dishonour is given, it shall not be necessary to give notice of a subsequent dishonour by non-payment unless the bill shall in the meantime have been accepted.

Rules as to notice of dishonour.

**49.** Notice of dishonour in order to be valid and effectual must be given in accordance with the following rules:—

- (1) The notice must be given by or on behalf of the holder, or by or on behalf of an indorser who, at the time of giving it, is himself liable on the bill.
- (2) Notice of dishonour may be given by an agent either in his own name, or in the name of any party entitled to give notice whether that party be his principal or not.
- (3) Where the notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior indorsers who have a right of recourse against the party to whom it is given.
- (4) Where notice is given by or on behalf of an indorser entitled to give notice as herein-before provided, it enures for the benefit of the holder and all indorsers subsequent to the party to whom notice is given.
- (5) The notice may be given in writing or by personal communication, and may be given in any terms which sufficiently identify the bill, and intimate that the bill has been dishonoured by non-acceptance or non-payment.
- (6) The return of a dishonoured bill to the drawer or an indorser is, in point of form, deemed a sufficient notice of dishonour.
- (7) A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the bill shall not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.
- (8) Where notice of dishonour is required to be given to any person, it may be given either to the party himself, or to his agent in that behalf.
- (9) Where the drawer or indorser is dead, and the party giving

notice knows it, the notice must be given to a personal representative if such there be, and with the exercise of reasonable diligence he can be found.

- (10) Where the drawer or indorser is bankrupt, notice may be given either to the party himself or to the trustee.
- (11) Where there are two or more drawers or indorsers who are not partners, notice must be given to each of them, unless one of them has authority to receive such notice for the others.
- (12) The notice may be given as soon as the bill is dishonoured and must be given within a reasonable time thereafter.

In the absence of special circumstances notice is not deemed to have been given within a reasonable time, unless—

- (a) where the person giving and the person to receive notice reside in the same place, the notice is given or sent off in time to reach the latter on the day after the dishonour of the bill; ;
- (b) where the person giving and the person to receive notice reside in different places, the notice is sent off on the day after the dishonour of the bill, if there be a post at a convenient hour on that day, and if there be no such post on that day then by the next post thereafter.
- (13) Where a bill when dishonoured is in the hands of an agent, he may either himself give notice to the parties liable on the bill, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder.
- (14) Where a party to a bill receives due notice of dishonour, he has after the receipt of such notice the same period of time for giving notice to antecedent parties that the holder has after the dishonour.
- (15) Where a notice of dishonour is duly addressed and posted, the sender is deemed to have given due notice of dishonour, notwithstanding any miscarriage by the post office.

50.—(1) Delay in giving notice of dishonour is excused where the delay is caused by circumstances beyond the control of the party giving notice, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the notice must be given with reasonable diligence.

Excuses for  
non-notice  
and delay.

- (2) Notice of dishonour is dispensed with—
- (a) When, after the exercise of reasonable diligence, notice as required by this Act cannot be given to or does not reach the drawer or indorser sought to be charged;
- (b) By waiver express or implied. Notice of dishonour may be waived before the time of giving notice has arrived, or after the omission to give due notice;
- (c) As regards the drawer in the following cases, namely, (1) where drawer and drawee are the same person, (2) where

the drawee is a fictitious person or a person not having capacity to contract, (3) where the drawer is the person to whom the bill is presented for payment, (4) where the drawee or acceptor is as between himself and the drawer under no obligation to accept or pay the bill, (5) where the drawer has countermanded payment:

(d) As regards the indorser in the following cases, namely, (1) where the drawee is a fictitious person or a person not having capacity to contract and the indorser was aware of the fact at the time he indorsed the bill, (2) where the indorser is the person to whom the bill is presented for payment, (3) where the bill was accepted or made for his accommodation.

**Noting or protest of bill.**

51.—(1) Where an inland bill has been dishonoured it may, if the holder think fit, be noted for non-acceptance or non-payment, as the case may be; but it shall not be necessary to note or protest any such bill in order to preserve the recourse against the drawer or indorser.

(2) Where a foreign bill, appearing on the face of it to be such, has been dishonoured by non-acceptance it must be duly protested for non-acceptance, and where such a bill, which has not been previously dishonoured by non-acceptance, is dishonoured by non-payment it must be duly protested for non-payment. If it be not so protested the drawer and indorsers are discharged. Where a bill does not appear on the face of it to be a foreign bill, protest thereof in case of dishonour is unnecessary.

(3) A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

(4) Subject to the provisions of this Act, when a bill is noted or protested, it must be noted on the day of its dishonour. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

(5) Where the acceptor of a bill becomes bankrupt or insolvent or suspends payment before it matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

(6) A bill must be protested at the place where it is dishonoured: Provided that—

(a) When a bill is presented through the post office, and returned by post dishonoured, it may be protested at the place to which it is returned and on the day of its return if received during business hours, and if not received during business hours, then not later than the next business day:

(b) When a bill drawn payable at the place of business or residence of some person other than the drawee, has been dishonoured by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

(7) A protest must contain a copy of the bill, and must be signed by the notary making it, and must specify—

- (a) The person at whose request the bill is protested :
- (b) The place and date of protest, the cause or reason for protesting the bill, the demand made, and the answer given, if any, or the fact that the drawee or acceptor could not be found.

(8) Where a bill is lost or destroyed, or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

(9) Protest is dispensed with by any circumstance which would dispense with notice of dishonour. Delay in noting or protesting is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the bill must be noted or protested with reasonable diligence.

52.—(1) When a bill is accepted generally presentment for payment is not necessary in order to render the acceptor liable.

Duties of  
holder as  
regards drawee  
or acceptor.

(2) When by the terms of a qualified acceptance presentment for payment is required, the acceptor, in the absence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day that it matures.

(3) In order to render the acceptor of a bill liable it is not necessary to protest it, or the notice of dishonour should be given to him.

(4) Where the holder of a bill presents it for payment, he shall exhibit the bill to the person from whom he demands payment, and when a bill is paid the holder shall forthwith deliver it up to the party paying it.

#### *Liabilities of Parties.*

53.—(1) A bill, of itself, does not operate as an assignment of funds in the hands of the drawee available for the payment thereof, and the drawee of a bill who does not accept as required by this Act is not liable on the instrument. This sub-section shall not extend to Scotland.

Funds in hand  
of drawee.

(2) In Scotland, where the drawee of a bill has in his hands funds available for the payment thereof, the bill operates as an assignment of the sum for which it is drawn in favour of the holder, from the time when the bill is presented to the drawee.

54. The acceptor of a bill, by accepting it—

Liability of  
acceptor.

(1) Engages that he will pay it according to the tenor of his acceptance :

(2) Is precluded from denying to a holder in due course—

(a) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill ;

(b) In the case of a bill payable to drawer's order, the then capacity of the drawer to indorse, but not the genuineness or validity of his indorsement ;

(c) In the case of a bill payable to the order of a third person, the existence of the payee and his then capacity to indorse, but not the genuineness or validity of his indorsement.

**Liability of  
drawer or  
indorser.**

**55.**—(1) The drawer of a bill by drawing it—

(a) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or any indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken;

(b) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

(2) The indorser of a bill by indorsing it—

(a) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or a subsequent indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken;

(b) Is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous indorsements;

(c) Is precluded from denying to his immediate or a subsequent indorsee that the bill was at the time of his indorsement a valid and subsisting bill, and that he had then a good title thereto.

**56.** Where a person signs a bill otherwise than as drawer or acceptor, he thereby incurs the liabilities of an indorser to a holder in due course.

**57.** Where a bill is dishonoured, the measure of damages, which shall be deemed to be liquidated damages, shall be as follows:—

(1) The holder may recover from any party liable on the bill, and the drawer who has been compelled to pay the bill may recover from the acceptor, and an indorser who has been compelled to pay the bill may recover from the acceptor or from the drawer, or from a prior indorser—

(a) The amount of the bill;

(b) Interest thereon from the time of presentment for payment if the bill is payable on demand and from the maturity of the bill in any other case;

(c) The expenses of noting, or, when protest is necessary, and the protest has been extended, the expense of protest.

(2) In the case of a bill which has been dishonoured abroad, in lieu of the above damages, the holder may recover from the drawer or an indorser, and the drawer or an indorser who has been compelled to pay the bill may recover from any party liable to him, the amount of the re-exchange with interest thereon until the time of payment.

**Stranger sign-  
ing bill liable  
as indorser.**

**Measure of  
damages  
against parties  
to dishonoured  
bill.**

(3) Where by this Act interest may be recovered as damages, such interest may, if justice require it, be withheld wholly or in part, and where a bill is expressed to be payable with interest at a given rate, interest as damages may or may not be given at the same rate as interest proper.

58.—(1) Where the holder of a bill payable to bearer negotiates it by delivery without indorsing it, he is called a "transferor by delivery." Transferor by delivery and transference.

(2) A transferor by delivery is not liable on the instrument.

(3) A transferor by delivery who negotiates a bill thereby warrants to his immediate transferees being a holder for value that the bill is what it purports to be, that he has a right to transfer it, and that at the time of transfer he is not aware of any fact which renders it valueless.

*Discharge of Bill.*

59.—(1) A bill is discharged by payment in due course by or on behalf of the drawee or acceptor. Payment in due course.

"Payment in due course" means payment made at or after the maturity of the bill to the holder thereof in good faith and without notice that his title to the bill is defective.

(2) Subject to the provisions herein-after contained, when a bill is paid by the drawer or an indorser it is not discharged; but

(a) Where a bill payable to, or to the order of, a third party is paid by the drawer, the drawer may enforce payment thereof against the acceptor, but may not re-issue the bill.

(b) Where a bill is paid by an indorser, or where a bill payable to drawer's order is paid by the drawer, the party paying it is remitted to his former rights as regards the acceptor or antecedent parties, and he may, if he thinks fit, strike out his own and subsequent indorsements, and again negotiate the bill.

(3) Where an accommodation bill is paid in due course by the party accommodated the bill is discharged.

60. When a bill payable to order on demand is drawn on a banker, and the banker on whom it is drawn pays the bill in good faith and in the ordinary course of business, it is not incumbent on the banker to show that the indorsement of the payee or any subsequent indorsement was made by or under the authority of the person whose indorsement it purports to be, and the banker is deemed to have paid the bill in due course, although such indorsement has been forged or made without authority.

Banker paying demand draft whereon indorsement is forged.

61. When the acceptor of a bill is or becomes the holder of it at or after its maturity, in his own right, the bill is discharged. Holder at maturity.

62.—(1) When the holder of a bill at or after its maturity absolutely and unconditionally renounces his rights against the acceptor the bill is discharged. Express waiver.

The renunciation must be in writing, unless the bill is delivered up to the acceptor.

(2) The liabilities of any party to a bill may in like manner be renounced by the holder before, at, or after its maturity; but nothing in this section shall affect the rights of a holder in due course without notice of the renunciation.

## Cancellation.

63.—(1) Where a bill is intentionally cancelled by the holder or his agent, and the cancellation is apparent thereon, the bill is discharged.

(2) In like manner any party liable on a bill may be discharged by the intentional cancellation of his signature by the holder or his agent. In such case any indorser who would have had a right of recourse against the party whose signature is cancelled, is also discharged.

(3) A cancellation made unintentionally, or under a mistake, or without the authority of the holder is inoperative; but where a bill or any signature thereon appears to have been cancelled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake, or without authority.

## Alteration of bill.

64.—(1) Where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is avoided except as against a party who has himself made, authorised, or assented to the alteration, and subsequent indorsers.

Provided that,

Where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, such holder may avail himself of the bill as if it had not been altered, and may enforce payment of it according to its original tenor.

(2) In particular the following alterations are material, namely, any alteration of the date, the sum payable, the time of payment, the place of payment, and, where a bill has been accepted generally, the addition of a place of payment without the acceptor's assent.

*Acceptance and Payment for Honour.*Acceptance for honour *suprà* protest.

65.—(1) Where a bill of exchange has been protested for dishonour by non-acceptance, or protested for better security, and is not overdue, any person, not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill *suprà* protest, for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.

(2) A bill may be accepted for honour for part only of the sum for which it is drawn.

(3) An acceptance for honour *suprà* protest in order to be valid must—

(a) be written on the bill, and indicate that it is an acceptance for honour;

(b) be signed by the acceptor for honour.

(4) Where an acceptance for honour does not expressly state for whose honour it is made, it is deemed to be an acceptance for the honour of the drawer.

(5) Where a bill payable after sight is accepted for honour, its maturity is calculated from the date of the noting for non-acceptance, and not from the date of the acceptance for honour.

66.—(1) The acceptor for honour of a bill by accepting it engages that he will, on due presentment, pay the bill according to the tenor of his acceptance, if it is not paid by the drawee, provided it has been duly presented for payment, and protested for non-payment, and that he receives notice of these facts.

(2) The acceptor for honour is liable to the holder and to all parties to the bill subsequent to the party for whose honour he has accepted.

67.—(1) Where a dishonoured bill has been accepted for honour Presentment to acceptor for honour. supra protest, or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honour, or referee in case of need.

(2) Where the address of the acceptor for honour is in the same place where the bill is protested for non-payment, the bill must be presented to him not later than the day following its maturity; and where the address of the acceptor for honour is in some place other than the place where it was protested for non-payment, the bill must be forwarded not later than the day following its maturity for presentment to him.

(3) Delay in presentment or non-presentment is excused by any circumstance which would excuse delay in presentment for payment or non-presentment for payment.

(4) When a bill of exchange is dishonoured by the acceptor for honour it must be protested for non-payment by him.

68.—(1) Where a bill has been protested for non-payment, any person may intervene and pay it supra protest for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn. Payment for honour supra protest.

(2) Where two or more persons offer to pay a bill for the honour of different parties, the person whose payment will discharge most parties to the bill shall have the preference.

(3) Payment for honour supra protest, in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honour which may be appended to the protest or form an extension of it.

(4) The notarial act of honour must be founded on a declaration made by the payor for honour, or his agent in that behalf, declaring his intention to pay the bill for honour, and for whose honour he pays.

(5) Where a bill has been paid for honour, all parties subsequent to the party for whose honour it is paid are discharged, but the payor for honour is subrogated for, and succeeds to both the rights and duties of, the holder as regards the party for whose honour he pays, and all parties liable to that party.

(6) The payor for honour on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonour is

Liability of acceptor for honour.

entitled to receive both the bill itself and the protest. If the holder do not on demand deliver them up he shall be liable to the payer for honour in damages.

(7) Where the holder of a bill refuses to receive payment *suprà* protest he shall lose his right of recourse against any party who would have been discharged by such payment.

*Lost Instruments.*

Holder's right to duplicate of lost bill.

69. Where a bill has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer if required to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

If the drawer on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so.

Action on lost bill.

70. In any action or proceeding upon a bill, the court or a judge may order that the loss of the instrument shall not be set up, provided an indemnity be given to the satisfaction of the court or judge against the claims of any other person upon the instrument in question.

*Bill in a Set.*

Rules as to sets.

71.—(1) Where a bill is drawn in a set, each part of the set being numbered, and containing a reference to the other parts, the whole of the parts constitute one bill.

(2) Where the holder of a set indorses two or more parts to different persons, he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed as if the said parts were separate bills.

(3) Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders deemed the true owner of the bill; but nothing in this sub-section shall affect the rights of a person who in due course accepts or pays the part first presented to him.

(4) The acceptance may be written on any part, and it must be written on one part only.

If the drawee accepts more than one part, and such accepted parts get into the hands of different holders in due course, he is liable on every such part as if it were a separate bill.

(5) When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereof.

(6) Subject to the preceding rules, where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged.

*Conflict of Laws.*

**72.** Where a bill drawn in one country is negotiated, accepted, or payable in another, the rights, duties, and liabilities of the parties thereto are determined as follows:—

(1) The validity of a bill as regards requisites in form is determined by the law of the place of issue, and the validity as regards requisites in form of the supervening contracts, such as acceptance, or indorsement, or acceptance *suprà* protest, is determined by the law of the place where such contract was made.

Provided that—

(a) Where a bill is issued out of the United Kingdom it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue:

(b) Where a bill, issued out of the United Kingdom, conforms, as regards requisites in form, to the law of the United Kingdom, it may, for the purpose of enforcing payment thereof, be treated as valid as between all persons who negotiate, hold, or become parties to it in the United Kingdom.

(2) Subject to the provisions of this Act, the interpretation of the drawing, indorsement, acceptance, or acceptance *suprà* protest of a bill, is determined by the law of the place where such contract is made.

Provided that where an inland bill is indorsed in a foreign country the indorsement shall as regards the payer be interpreted according to the law of the United Kingdom.

(3) The duties of the holder with respect to presentment for acceptance or payment and the necessity for or sufficiency of a protest or notice of dishonour, or otherwise, are determined by the law of the place where the act is done or the bill is dishonoured.

(4) Where a bill is drawn out of but payable in the United Kingdom and the sum payable is not expressed in the currency of the United Kingdom, the amount shall, in the absence of some express stipulation, be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable.

(5) Where a bill is drawn in one country and is payable in another, the due date thereof is determined according to the law of the place where it is payable.

## PART III.—CHEQUES ON A BANKER.

**73.** A cheque is a bill of exchange drawn on a banker payable on demand.

Except as otherwise provided in this Part, the provisions of this Act applicable to a bill of exchange payable on demand apply to a cheque.

Presentment  
of cheque for  
payment.

**74. Subject to the provisions of this Act—**

- (1) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or the person on whose account it is drawn had the right at the time of such presentment as between him and the banker to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of such banker to a larger amount than he would have been had such cheque been paid.
- (2) In determining what is a reasonable time regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.
- (3) The holder of such cheque as to which such drawer or person is discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge, and entitled to recover the amount from him.

Revocation  
of banker's  
authority.

**75. The duty and authority of a banker to pay a cheque drawn on him by his customer are determined by—**

- (1) Countermand of payment :
- (2) Notice of the customer's death.

*Crossed Cheques.*

General and  
special cross-  
ings defined.

**76.—(1) Where a cheque bears across its face an addition of—**

(a) The words "and company" or any abbreviation thereof between two parallel transverse lines, either with or without the words "not negotiable"; or

(b) Two parallel transverse lines simply, either with or without the words "not negotiable";

that addition constitutes a crossing, and the cheque is crossed generally.

(2) Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition constitutes a crossing, and the cheque is crossed specially and to that banker.

Crossing by  
drawer or  
after issue.

**77.—(1) A cheque may be crossed generally or specially by the drawer.**

(2) Where a cheque is uncrossed, the holder may cross it generally or specially.

(3) Where a cheque is crossed generally the holder may cross it specially.

(4) Where a cheque is crossed generally or specially, the holder may add the words "not negotiable."

(5) Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker for collection.

(6) Where an uncrossed cheque, or a cheque crossed generally, is sent to a banker for collection, he may cross it specially to himself.

**78.** A crossing authorised by this Act is a material part of the cheque; it shall not be lawful for any person to obliterate or, except as authorised by this Act, to add to or alter the crossing.

Crossing a material part of cheque.

**79.**—(1) Where a cheque is crossed specially to more than one banker except when crossed to an agent for collection being a banker, the banker on whom it is drawn shall refuse payment thereof.

Duties of banker as to crossed cheques.

(2) Where the banker on whom a cheque is drawn which is so crossed nevertheless pays the same, or pays a cheque crossed generally otherwise than to a banker, or if crossed specially otherwise than to the banker to whom it is crossed, or his agent for collection being a banker, he is liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

Provided that where a cheque is presented for payment which does not at the time of presentation appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered otherwise than as authorised by this Act, the banker paying the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned by reason of the cheque having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorised by this Act, and of payment having been made otherwise than to a banker or to the banker to whom the cheque is or was crossed, or to his agent for collection being a banker, as the case may be.

**80.** Where the banker, on whom a crossed cheque is drawn, in good faith and without negligence pays it, if crossed generally, to a banker, and if crossed specially, to the banker to whom it is crossed, or his agent for collection being a banker, the banker paying the cheque, and, if the cheque has come into the hands of the payee, the drawer, shall respectively be entitled to the same rights and be placed in the same position as if payment of the cheque had been made to the true owner thereof.

Protection to banker and drawer where cheque is crossed.

**81.** Where a person takes a crossed cheque which bears on it the words "not negotiable," he shall not have and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had.

Effect of crossing on holder.

**82.** Where a banker in good faith and without negligence receives payment for a customer of a cheque crossed generally or specially to himself, and the customer has no title or a defective title thereto, the banker shall not incur any liability to the true owner of the cheque by reason only of having received such payment.

Protection to collecting banker.

#### PART IV.—PROMISSORY NOTES.

**83.**—(1) A promissory note is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money to, or to the order of, a specified person or to bearer.

Promissory note defined

(2) An instrument in the form of a note payable to maker's order is not a note within the meaning of this section unless and until it is indorsed by the maker.

(3) A note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell or dispose thereof.

(4) A note which is, or on the face of it purports to be, both made and payable within the British Islands is an inland note. Any other note is a foreign note.

**Delivery necessary.**

**84.** A promissory note is inchoate and incomplete until delivery thereof to the payee or bearer.

**Joint and several notes.**

**85.**—(1) A promissory note may be made by two or more makers, and they may be liable thereon jointly, or jointly and severally according to its tenor.

(2) Where a note runs "I promise to pay" and is signed by two or more persons it is deemed to be their joint and several note.

**Note payable on demand.**

**86.**—(1) Where a note payable on demand has been indorsed, it must be presented for payment within a reasonable time of the indorsement. If it be not so presented the indorser is discharged.

(2) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade, and the facts of the particular case.

(3) Where a note payable on demand is negotiated, it is not deemed to be overdue, for the purpose of affecting the holder with defects of title of which he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue.

**Presentment of note for payment.**

**87.**—(1) Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place in order to render the maker liable. In any other case, presentment for payment is not necessary in order to render the maker liable.

(2) Presentment for payment is necessary in order to render the indorser of a note liable.

(3) Where a note is in the body of it made payable at a particular place, presentment at that place is necessary in order to render an indorser liable; but when a place of payment is indicated by way of memorandum only, presentment at that place is sufficient to render the indorser liable, but a presentment to the maker elsewhere, if sufficient in other respects, shall also suffice.

**Liability of maker.**

**88.** The maker of a promissory note by making it—

(1) Engages that he will pay it according to its tenor;

(2) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

**Application of Part II to notes.**

**89.**—(1) Subject to the provisions in this Part and, except as by this section provided, the provisions of this Act relating to bills of exchange apply, with the necessary modifications, to promissory notes.

(2) In applying those provisions the maker of a note shall be deemed to correspond with the acceptor of a bill, and the first indorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order.

(3) The following provisions as to bills do not apply to notes; namely, provisions relating to—

- (a) Presentment for acceptance;
- (b) Acceptance;
- (c) Acceptance *suprà* protest;
- (d) Bills in a set.

(4) Where a foreign note is dishonoured, protest thereof is unnecessary.

#### PART V.—SUPPLEMENTARY.

90. A thing is deemed to be done in good faith, within the meaning of this Act, where it is in fact done honestly, whether it is done negligently or not.

91.—(1) Where, by this Act, any instrument or writing is required to be signed by any person, it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written thereon by some other person by or under his authority.

(2) In the case of a corporation where by this Act any instrument or writing is required to be signed it is sufficient if the instrument or writing be sealed with the corporate seal.

But nothing in this section shall be construed as requiring the bill or note of a corporation to be under seal.

92. Where, by this Act, the time limited for doing any act or thing is less than three days, in reckoning time, non-business days are excluded.

“Non-business days” for the purpose of this Act mean—

- (a) Sunday, Good Friday, Christmas Day;
- (b) A bank holiday under the Bank Holidays Act, 1871, or Acts amending it;
- (c) A day appointed by Royal proclamation as a public fast or thanksgiving day.

Any other day is a business day.

93. For the purposes of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding; and the formal protest may be extended at any time thereafter as of the date of the noting.

94. Where a dishonoured bill or note is authorised or required to be protested, and the services of a notary cannot be obtained at the place where the bill is dishonoured, any householder or substantial resident of the place may, in the presence of two witnesses, give a certificate, signed by them, attesting the dishonour of the

When noting equivalent to protest.

Protest when notary not accessible.

bill, and the certificate shall in all respects operate as if it were a formal protest of the bill.

The form given in Schedule 1 to this Act may be used with necessary modifications, and if used shall be sufficient.

Dividend  
warrants may  
be crossed.

(Repealed by  
the Statute  
Law Revision  
Act, 1898).

**95.** The provisions of this Act as to crossed cheques shall apply to a warrant for payment of dividend.

**96.** The enactments mentioned in the Second Schedule to this Act are hereby repealed as from the commencement of this Act to the extent in that schedule mentioned.

Provided that such repeal shall not affect anything done or suffered, or any right, title, or interest acquired or accrued before the commencement of this Act, or any legal proceeding or remedy in respect of any such thing, right, title, or interest.]

Savings.

**97.**—(1) The rules in bankruptcy relating to bills of exchange, promissory notes, and cheques, shall continue to apply thereto notwithstanding anything in this Act contained.

(2) The rules of common law including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to bills of exchange, promissory notes, and cheques.

(3) Nothing in this Act or in any repeal effected thereby shall affect—

33 & 34 Vict.  
c. 97.

(a) The provisions of the Stamp Act, 1870, or Acts amending it, or any law or enactment for the time being in force relating to the revenue :

25 & 26 Vict.  
c. 89.

(b) The provisions of the Companies Act, 1862, or Acts amending it, or any Act relating to joint stock banks or companies :

(c) The provisions of any Act relating to or confirming the privileges of the Bank of England or the Bank of Ireland respectively :

(d) The validity of any usage relating to dividend warrants, or the indorsements thereof.

Saving of  
summary  
diligence in  
Scotland.

**98.** Nothing in this Act or in any repeal effected thereby shall extend or restrict, or in any way alter or affect the law and practice in Scotland in regard to summary diligence.

Construction  
with other  
Acts, etc.

**99.** Where any Act or document refers to any enactment repealed by this Act, the Act or document shall be construed, and shall operate, as if it referred to the corresponding provisions of this Act.

Parole evidence  
allowed in  
certain judicial  
proceedings in  
Scotland.

**100.** In any judicial proceeding in Scotland, any fact relating to a bill of exchange, bank cheque, or promissory note, which is relevant to any question of liability thereon, may be proved by parole evidence : Provided that this enactment shall not in any way affect the existing law and practice whereby the party who is, according to the tenor of any bill of exchange, bank cheque, or promissory note, debtor to the holder in the amount thereof, may be required, as a condition of obtaining a writ of diligence, or suspen-

sion of a charge, or threatened charge, to make such consignation, or to find such caution as the court or judge before whom the cause is depending may require.

This section shall not apply to any case where the bill of exchange, bank cheque, or promissory note has undergone the sesennial prescription.

## **SCHEDULE I.**

Form of protest which may be used when the services of a notary cannot be obtained

## Section 94

Know all men that I, *A.B.* [householder], of in the county of United Kingdom, at the request of *C.D.*, there being no notary public available, did on the day of 188 demand payment [or acceptance] of the bill of exchange hereunder written, from *E.F.*, to which demand he made answer [state answer, if any] wherefore I now, in the presence of *G.H.* and *J.K.*, do protest the said bill of exchange.

(Signed) *A.B.*  
*G.H.* }  
*J.K.* } Witnesses.

*N.B.*—The bill itself should be annexed, or a copy of the bill and all that is written thereon should be underwritten

**BILLS OF EXCHANGE (CROSSED CHEQUES) ACT, 1906.**

*An Act to amend section eighty-two of the Bills of Exchange Act,*  
1882. [4th August, 1906.]

**BE** it enacted, etc.

1. A banker receives payment of a crossed cheque for a customer within the meaning of section eighty-two of the Bills of Exchange Act, 1882, notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof.

2. This Act may be cited as the Bills of Exchange (Crossed Cheques) Act, 1906, and this Act and the Bills of Exchange Act, 1882, may be cited together as the Bills of Exchange Acts, 1882 and 1906.

**BILLS OF EXCHANGE (TIME OF NOTING) ACT, 1917.**

(7 & 8 GEO. 5, c. 48).

*An Act to amend the Bills of Exchange Act, 1882, with respect to the time for noting Bills.* [8th November, 1917.]

BE it enacted, etc.

1. In sub-section (4) of s. 51 of the Bills of Exchange Act, 1882 (which relates to the time of noting a dishonoured bill), the words

"it must be noted on the day of its dishonour" shall be repealed, and the following words shall be substituted therefor, namely, "it may be noted on the day of its dishonour and must be noted not later than the next succeeding business day."

2. This Act may be cited as the Bills of Exchange (Time of Noting) Act, 1917, and shall be construed as one with the Bills of Exchange Act, 1882, and the Bills of Exchange Acts, 1882 and 1906, and this Act may be cited together as the Bills of Exchange Acts, 1882 to 1917.

**BILLS OF EXCHANGE ACT (1882) AMENDMENT ACT, 1932.**

1. Sections 76 to 82 of the Bills of Exchange Act, 1882 (which relate to crossed cheques), as amended by the Bills of Exchange (Crossed Cheques) Act, 1906, shall apply to a banker's draft as if the draft were a cheque.

For the purposes of this section, the expression "Banker's draft" means a draft payable on demand drawn by or on behalf of a Bank upon itself, whether payable at the Head Office or some other Office of the Bank.

**REGULATIONS RELATING TO BANK OF ENGLAND NOTES OF £5 AND UPWARDS, ETC., ALLEGED TO HAVE BEEN LOST, MISLAID, OR STOLEN.**

1. Any Person desirous of tracing Bank Notes, Post Bills, etc., lost, mislaid, or stolen, with a view, if possible, of recovering the property, may, upon payment of a registration fee of 2s. 6d., cause the Numbers, Dates and other Particulars of such Notes, etc., to be entered, together with the Name and Address of the Applicant, in a Book kept in the Secretary's Office at the Bank of England for that purpose:—Bank Notes, however, being payable to bearer on demand, the Bank cannot hold themselves under any responsibility should Notes so entered be paid on presentation, whether from inadvertence of the Clerks of the Establishment, under an order from the Governors, or from any cause whatever.

2. The proper Officers of the Bank will endeavour, if the circumstances of the case permit, to delay payment of the Notes, etc., and to give information of their presentation to the Person who has given notice, and paid the registration fee; but such Notice shall not be in force for more than twelve months from its date.

3. Many Bank Notes, etc., the subject of notice, are presented at the Bank by Bankers and other undoubted holders for value, and must be paid on presentation; in these cases the Bank cannot do more than endeavour to give the earliest information to the giver of the Notice.

## APPENDIX II.

## MANDATE OR AUTHORITY FOR SOCIETY, OR CLUB.

To the ..... Bank, Limited.

Copy of Resolutions passed by the <sup>1</sup> ..... of the <sup>2</sup> ..... at  
their meeting hold on the ..... day of ..... 19....

- (1) "That the ..... Bank, Limited, be and are hereby appointed Bankers to the <sup>3</sup> .....
- (2) "That all cheques on the banking account be signed and all bills, notes, and other negotiable instruments be drawn, accepted, and made on behalf of the <sup>3</sup> ..... by or any <sup>4</sup> ..... or more of them.
- (3) "That cheques, bills, notes, and other negotiable instruments payable to the <sup>3</sup> ..... may be endorsed for the <sup>3</sup> ..... by any one or more of the persons mentioned in the Resolution No. 2 or by the Secretary of the <sup>3</sup> ..... for the time being.
- (4) "That a copy of these Resolutions, under the Common Seal and signed by the Chairman, be handed to the Bank, together with specimens of the necessary signatures."

I certify that the Resolutions, of which the above are copies, were duly passed at a meeting of the <sup>1</sup> ..... held on the ..... day of ..... 19....

As WITNESS <sup>5</sup> (the Common Seal of the <sup>3</sup> ..... and) the signature of myself as Chairman of the said meeting, this ..... day of ..... 19...

..... Chairman  
Countersigned.

..... Secretary.

The following are the signatures of the persons mentioned in the above Resolutions—

.....  
.....  
.....

<sup>1</sup> Committee,  
or other Gover-  
ning Body.

<sup>2</sup> Full name  
of the Club or  
Society.

<sup>3</sup> Club or  
Society.

<sup>4</sup> Here insert  
smallest num-  
ber allowed to  
sign.

<sup>5</sup> Strike out  
words in brack-  
ets in cases  
where there is  
no Seal.



## APPENDIX II.

## APPOINTMENT OF BANKERS BY COMPANY.

*To THE BRITISH BANK, LIMITED.*

19

*Gentlemen,*

*COMPANY, LIMITED*

*(Registered Office—*

*My Directors request you to open an account with the above-mentioned Company, and I hand you herewith:—*

1. Certificate of Incorporation (for inspection and return).
2. Copy of the Memorandum and Articles of Association.
3. Certificate of Registrar of Companies, that the Company is entitled to commence business (for inspection and return).
4. Certified Copy of a Resolution of the Board of Directors regulating the conduct of the Account, together with specimens of the signatures of the authorised signatories.

*(3)—This Certificate  
is not required in the  
case of a private  
company.*

*Yours faithfully,*

*Secretary.*

*COMPANY, LIMITED.*

## APPENDIX II

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## APPOINTMENT OF BANKERS.

At a Meeting of the Board of Directors of \_\_\_\_\_

\_\_\_\_\_  
Limited whose Registered  
Office is at \_\_\_\_\_

held the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

**IT WAS RESOLVED:—**

1. That BRITISH BANK LIMITED be appointed the Bankers of the Company and that they be and are hereby authorised to honour and comply with all Cheques Drafts Bills Promissory Notes Acceptances negotiable instruments and orders expressed to be drawn accepted made or given on behalf of this Company at any time or times whether the banking account or accounts of this Company are overdrawn by any payment of or in relation thereto or are in credit or otherwise and to act on any instruction relating to the accounts affairs or transactions of the Company provided they are signed by \_\_\_\_\_

and countersigned by \_\_\_\_\_

2. That the Bank be and they are hereby authorised to treat all Bills Promissory Notes and Acceptances as being endorsed on behalf of the Company and to discount or otherwise deal with the same provided they purport to be signed by \_\_\_\_\_

We hereby certify the above to be a true copy from the Minutes.

---

Chairman

---

Secretary

Date \_\_\_\_\_ 19 \_\_\_\_\_

## SPECIMEN SIGNATURES.

*will sign* \_\_\_\_\_  
" \_\_\_\_\_  
" \_\_\_\_\_  
" \_\_\_\_\_  
" \_\_\_\_\_  
" \_\_\_\_\_  
" \_\_\_\_\_

## APPENDIX III.

## NORTHERN IRELAND; IRISH FREE STATE.

By virtue of the Government of Ireland Act, 1920, these Governments have power to impose stamp duties on deeds and other instruments. Arrangements have, however, been made to avoid double taxation.

In regard to Northern Ireland, the present position is that where an instrument is chargeable with stamp duty in Great Britain and in Northern Ireland and has been stamped in one of those countries, the instrument shall, to the extent of the duty it bears, be deemed to be stamped in the other country: provided that, if the stamp duty chargeable on any instrument in such other country exceeds the stamp duty chargeable in respect of that instrument in the country in which the instrument has previously been stamped, the instrument shall not be deemed to have been duly stamped unless and until stamped with a stamp denoting an amount equal to the excess duty, and may be so stamped without penalty at any time within thirty days after it has been first received in Northern Ireland or the other part of the United Kingdom, as the case may be.

In regard to the Irish Free State, the position, as between that country and Great Britain, is the same as given above, and the arrangement applies also between the Irish Free State and Northern Ireland until the Government of the latter have withdrawn their consent to such application.

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